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THE STUDENT'S HISTORY OF THE MIDDLE AGES.

VIEW

OF

THE STATE OF EUROPE

DURING

THE MIDDLE AGES.

BY HENRY HALLAM, LL.D., F.R.A.S.

INCORPORATING IN THE TEXT THE AUTHOR'S LATEST RESEARCHES, WITH ADDITIONS FROM RECENT WRITERS, AND ADAPTED TO THE USE OF STUDENTS.

BY WILLIAM SMITH, D.C.L., LL.D.

NEW YORK:
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PREFACE.

THE present Edition of the "History of the Middle Ages" has been undertaken with the concurrence of Mr. Hallam's representatives, who consider that a great injustice has been done to his literary character by the reprint of the obsolete edition of 1816, after it had been superseded by the Author's own careful revision, and had been enriched by many supplemental notes, which added one-third to the original size of the Work.

A few words are necessary to explain the plan which the Editor has adopted in order to bring the Work within one volume, available for the use of Students. It must not be regarded as an Abridgment; for though some omissions have been made, for reasons stated below, they are few in amount, and nothing essential or important has been left out. In fact, the great bulk of the book remains unchanged. But it is necessary to recollect the plan which Mr. Hallam pursued in the later editions of his Work, in order to judge of the necessity and expediency of the alterations and omissions made in this Edition. He informed his readers, in the Preface to his "Supplemental Notes," "that he was always reluctant to make such alterations as would leave to the purchasers of former editions a right to complain," and that being anxious to bring his Work "nearer to the boundaries of the historic domain, as it had been enlarged within his own age," he published in a separate form various disquisitions, in which his object was "to reconsider those portions of the Work which related to subjects discussed by eminent writers since its publication, to illustrate and enlarge some passages which had been imperfectly or obscurely treated, and to acknowledge with freedom his own errors." Now, however much we may respect the Author's motives in

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adopting this method, and his candor in acknowledging his errors, the plan is attended with the obvious inconvenience of having two books to consult instead of one, and of finding statements in the Text not unfrequently contradicted or modified by corrections in the Notes. Accordingly, in preparing the book for the use of Students, it seemed to the Editor advisable to incorporate in the Text the corrections made in the Notes, omitting such views as the Author had himself rejected, and only inserting in the Supplemental Notes at the end of each chapter the information which could not conveniently be interwoven with the Text. By this means, and by giving the conclusions at which the Author had arrived, without, in all cases, enumerating the opinions of writers which he mentioned only to reject, much space has been saved. Moreover, a further saving has been effected by occasionally abbreviating some of the less important remarks, and by leaving out most of the notes at the foot of the pages containing reference to authorities, which, however serviceable to historical inquirers, can be of no use to Students in Schools and Colleges.

The Editor has added to the chapter on the Constitutional History of England various original documents, which will be of great service to the student. Of these, the most important are, the Statutes of William the Conqueror, the Charter of Liberties of Henry I., the Constitutions of Clarendon, and the Assize of Clarendon, the Magna Charta, and the Confirmation of the Charters. He has also inserted genealogical and other Tables, and has supplied some information from important works treating of the subjects discussed by Mr. Hallam, which have appeared since the last edition of his book. But such alterations and additions have been made sparingly, and it has been the aim of the Editor to present the Work as nearly as possible in the form in which he conceives the Author would have wished it to appear if he had himself prepared an edition for the special use of Students.

WM. SMITH.

LONDON, *May* 10, 1871.

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THE STUDENT'S
HISTORY OF THE MIDDLE AGES.

CHAPTER I.

THE HISTORY OF FRANCE FROM ITS CONQUEST BY CLOVIS TO THE INVASION OF NAPLES BY CHARLES VIII.

PART I.

§ 1. Fall of the Roman Empire. § 2. Invasion of Clovis. § 3. The MEROVINGIANS, or first Race of French Kings. Accession of Pepin. § 4. The CARLOVINGIANS. State of Italy. § 5. Charlemagne. His Reign. § 6. His Coronation as Emperor. § 7. His Character. § 8. Louis the Debonair. § 9. His Successors. § 10. Remarks upon the Carlovingian Period. § 11. Calamitous State of the Empire in the Ninth and Tenth Centuries. § 12. The Hungarians. § 13. The Normans. § 14. Accession of Hugh Capet. § 15. His first Successors. § 16. Louis VII. § 17. Philip Augustus. Conquest of Normandy. § 18. War in Languedoc. § 19. Louis IX. His Character. § 20. Digression upon the Crusades. § 21. Philip III. § 22. Philip IV. Aggrandizement of French Monarchy under his Reign. § 23. Suppression of the Knights Templars. § 24. Reigns of his Children. Question of Salic Law. § 25. Claim of Edward III.

§ 1. BEFORE the conclusion of the fifth century the mighty fabric of empire which valor and policy had founded upon the seven hills of Rome was finally overthrown in all the west of Europe by the barbarous nations from the North, whose martial energy and whose numbers were irresistible. A race of men, formerly unknown or despised, had not only dismembered that proud sovereignty, but permanently settled themselves in its fairest provinces, and imposed their yoke upon the ancient possessors. The Vandals were masters of Africa; the Suevi held part of Spain; the Visigoths possessed the remainder, with a large portion of Gaul; the Burgundians occupied the provinces watered by the Rhone and Saône; the Ostrogoths almost all Italy. The north-west of Gaul, between the Seine and the Loire, some writers have filled with an Armorican republic;[1] while the remainder was *still* nominally subject to the Roman Empire, and governed

[1] See NOTE I., "The Armorican Republic."

by a certain Syagrius, rather with an independent than a deputed authority.

§ 2. At this time Clovis, king of the Salian Franks,[2] a tribe of Germans long connected with Rome, and originally settled upon the right bank of the Rhine, but who had latterly penetrated as far as Tournay and Cambray, invaded Gaul, and defeated Syagrius at Soissons (A.D. 486). The result of this victory was the subjugation of those provinces which had previously been considered as Roman. But as their allegiance had not been very strict, so their loss was not very severely felt; since Anastasius, the Emperor of Constantinople, was not too proud to confer upon Clovis the titles of consul and patrician, which he was too prudent to refuse.[3]

§ 3. Clovis was the founder of the MEROVINGIAN dynasty. But the history of this period is so intricate, that it may assist the memory to distribute it into the following divisions:

I. *The Reign of Clovis* (A.D. 481–511).—Some years after his recognition by the Emperor, Clovis defeated the Alemanni, or Suabians, in a great battle at Zulpich, near Cologne. In consequence of a vow, it was said, made during this engagement, and at the instigation of his wife Clotilda, a princess of Burgundy, he became a convert to Christianity (A.D. 496). It would be a fruitless inquiry whether he was sincere in this change; but it is certain, at least, that no policy could have been more successful. The Arian sect, which had been early introduced among the barbarous nations, was predominant, though apparently without intolerance, in the Burgundian and Visigoth courts; but the clergy of Gaul were strenuously attached to the Catholic side, and, even before his conversion, had favored the arms of Clovis. They now became his most zealous supporters, and were rewarded by him with artful gratitude, and by his descendants with lavish munificence. Upon the pretense of religion he attacked Alaric, king of the Visigoths, and by one great victory near Poitiers, overthrowing their empire in Gaul, reduced them to the maritime province of Septimania, a narrow strip of coast between the Rhone and the Pyrenees (A.D. 507). The last exploits of Clovis were the reduction of certain independent chiefs of his own tribe and family, who were settled in the neighborhood of the Rhine. All these he put to death by force or treachery; for he was cast in the true mould of conquerors, and may justly be ranked among the first of his class, both for the splendor and the guiltiness of his ambition.

[2] See NOTE II., "The Franks." [3] See NOTE III., "The Consulship of Clovis."

II. *The Reigns of the four Sons of Clovis* (A.D. 511–561).—Clovis left four sons; one illegitimate, or at least born before his conversion; and three by his queen Clotilda. These four made, it is said, an equal partition of his dominions, which comprehended not only France, but the western and central parts of Germany, besides Bavaria, and perhaps Suabia, which were governed by their own dependent, but hereditary, chiefs. Thierry, the eldest, had what was called Austrasia, the eastern or German division, and fixed his capital at Metz; Clodomir, at Orleans; Childebert at Paris; and Clotaire, at Soissons. During their reigns the monarchy was aggrandized by the conquest of Burgundy, and Provence, in Gaul itself, while Thuringia, Suabia, and Bavaria, on the other side of the Rhine, were added to their dominions. Clotaire, the youngest brother, ultimately reunited all the kingdoms.

III. *From the Death of Clotaire I. to the Accession of Clotaire II.* (A.D. 561–613).—Upon the death of Clotaire I. a second partition among his four sons ensued; the four kingdoms of Paris, Soissons, Orleans, and Austrasia revived; but a new partition of these was required by the recent conquests, and Gontran of Orleans, without resigning that kingdom, removed his residence to Burgundy. The four kingdoms were reduced to three by the death of Caribert, king of Paris; one, afterwards very celebrated by the name of Neustria, between the Scheldt and the Loire, was formed under Chilperic, comprehending those of Paris and Soissons. Caribert of Paris had taken Aquitaine, which at his death was divided among the three survivors; Austrasia was the portion of Sigebert. This generation was fruitful of still more crimes than the last, redeemed by no golden glory of conquest. Fredegonde, the wife of Chilperic, diffused a baleful light over this period. But while she tyrannized with little control in the west of France, her rival and sister in crime, Brunehaut, wife of Sigebert and mother of Thierry II., his successor, had to encounter a powerful opposition from the Austrasian aristocracy; and in this part of the monarchy a new feature developed itself; the great proprietors, or nobility, acted systematically with a view to restrain the royal power. Brunehaut, after many vicissitudes, and after having seen her two sons on the thrones of Austrasia and Burgundy, fell into the hands of Clotaire II., king of the other division, and was sentenced to a cruel death.[4] Clotaire united the three Frank kingdoms.

[4] The names of Fredegonde and Brunehaut are distinguished even in that age for the magnitude of their crimes: of the atrocities of Fredegonde none have doubted; and Brunehaut has met with advocates in modern times, less, perhaps, from any fair

IV. *Reigns of Clotaire II. and his Son Dagobert I.* (A.D. 613–638).—The royal power, though shaken by the Austrasian aristocracy, was still effective. Dagobert, a prince who seems to have rather excelled most of his family, and to whose munificence several extant monuments of architecture and the arts are referred, endeavored to stem the current. He was the last of the Merovingians who appears to have possessed any distinctive character.

V. *From the Accession of Clovis II., Son of Dagobert, to Pepin Heristal's Victory over the Neustrians at Testry* (A.D. 638–687). — After Dagobert the kings of France dwindled into personal insignificance, and are generally treated by later historians as insensati, or idiots. The whole power of the kingdom devolved upon the mayors of the palace, originally officers of the household, through whom petitions or representations were laid before the king.[5] The weakness of sovereigns rendered this office important, and still greater weakness suffered it to become elective; men of energetic talents and ambition united it with military command; and the history of France for half a century presents no names more conspicuous than those of Ebroin and Grimoald, mayors of Neustria and Austrasia, the western and eastern divisions of the French monarchy.[6] These, however, met with violent ends; but a more successful usurper of the royal authority was Pepin Heristal, first mayor, and afterwards duke, of Austrasia. After becoming the acknowledged head of this part of the kingdom, he put an end to the independence of Neustria also by the decisive battle of Testry, fought in 687. The battle of Testry is one of the turning-points in French his-

presumptions of her innocence than from compassion for the cruel death which she underwent. Brunehaut was no unimportant personage in this history. She had become hateful to the Austrasian aristocracy by her Gothic blood, and still more by her Roman principles of government. There was evidently a combination to throw off the yoke of civilized tyranny. It was a great conflict, which ended in the virtual dethronement of the house of Clovis. Much, therefore, may have been exaggerated by Fredegarius, a Burgundian by birth, in relating the crimes of Brunehaut. But, unhappily, the antecedent presumption, in the history of that age, is always on the worse side. She was unquestionably endowed with a masculine energy of mind, and very superior to such a mere imp of audacious wickedness as Fredegonde. Brunehaut left a great and almost fabulous name; public causeways, towers, castles, in different parts of France, are popularly ascribed to her. It has even been suspected by some that she suggested the appellation of Brunechild in the Nibelungen Lied. That there is no resemblance in the story or in the character, courage excepted, of the two heroines, can not be thought an objection.

[5] See NOTE IV., "The Mayor of the Palace."

[6] The original kingdoms of Soissons, Paris, and Orleans were consolidated into that denominated Neustria, to which Burgundy was generally appendant, though distinctly governed by a mayor of its own election. But Aquitaine was, from the time of Dagobert I., separated from the rest of the monarchy, under a ducal dynasty, sprung from Aribert, brother of that monarch. See NOTE V., "Aquitaine."

tory. It gave the death-blow to Merovingian royalty: it brought to a termination the struggle between the two great members of the Frank empire; it assured the preponderance of Teutonic over Roman Gaul. Pepin fixed his residence at Cologne, and his family seldom kept their court at Paris. The kingdoms of Austrasia and Neustria rested on different bases. In the former the Franks were more numerous, less scattered, and, as far as we can perceive, had a more considerable nobility. They had received a less tincture of Roman policy. They were nearer to the mother country, which had been, as the earth to Antæus, the source of perpetually recruited vigor. Burgundy, a member latterly of the Neustrian monarchy, had also a powerful aristocracy, but not in so great a degree, probably, of Frank, or even barbarian descent. It is highly important to keep in mind this distinction between Austrasia and Neustria, subsisting for some ages, and, in fact, only replaced, speaking without exact geographical precision, by that of Germany and France.

VI. *From the Battle of Testry to the Accession of Pepin le Bref* (A.D. 687–752).—From this time the family of Pepin was virtually sovereign in France, though at every vacancy kings of the royal house were placed by them on the throne. Charles Martel, indeed, son of Pepin, was not acknowledged, even in Austrasia, for a short time after his father's death, and Neustria attempted to regain her independence; but he was soon called to power, defeated, like his father, the western Franks, and became, in almost as great a degree as his grandson, the founder of a new monarchy. But in 732 he was called upon to encounter a new and terrible enemy. The Saracens, after subjugating Spain, had penetrated into the very heart of France. Charles Martel gained a complete victory over them between Tours and Poitiers, in which 300,000 Mohammedans are hyperbolically asserted to have fallen. The reward of this victory was the province of Septimania, which the Saracens had conquered from the Visigoths.[1]

Such powerful subjects were not likely to remain long

[1] The victory of Charles Martel has immortalized his name, and may justly be reckoned among those few battles of which a contrary event would have essentially varied the drama of the world in all its subsequent scenes; with Marathon, Arbela, the Metaurus, Châlons, and Leipsic. Yet do we not judge a little too much by the event, and follow, as usual, in the wake of fortune? Has not more frequent experience condemned those who set the fate of empires upon a single cast, and risk a general battle with invaders, whose greater peril is in delay? Was not this the fatal error by which Roderic had lost his kingdom? Was it possible that the Saracens could have retained any permanent possession of France, except by means of a victory? And did not the contest upon the broad champaign of Poitou afford them a considerable prospect of success, which a more cautious policy would have withheld?

contented without the crown; but the circumstances under which it was transferred from the race of Clovis are connected with one of the most important revolutions in the history of Europe. The mayor Pepin, surnamed le Bref, to distinguish him from his grandfather, inheriting his father Charles Martel's talents and ambition, made, in the name and with the consent of the nation, a solemn reference to the pope Zacharias, as to the deposition of Chilperic III., under whose nominal authority he himself was reigning. The decision was favorable; that he who possessed the power should also bear the title of king. The unfortunate Merovingian was dismissed into a convent, and the Franks, with one consent, raised Pepin to the throne, the founder of a more illustrious dynasty (A.D. 752). In order to judge of the importance of this revolution to the See of Rome as well as to France, we must turn our eyes upon the affairs of Italy.

§ 4. THE CARLOVINGIANS.—The dominion of the Ostrogoths was annihilated by the arms of Belisarius and Narses in the sixth century, and that nation appears no more in history. But not long afterwards the Lombards, a people for some time settled in Pannonia, not only subdued that northern part of Italy which has retained their name, but, extending themselves southward, formed the powerful duchies of Spoleto and Benevento. The residence of their kings was in Pavia; but the hereditary vassals, who held those two duchies, might be deemed almost independent sovereigns. The rest of Italy was governed by exarchs, deputed by the Greek emperors, and fixed at Ravenna. In Rome itself neither the people nor the bishops, who had already conceived in part their schemes of ambition, were much inclined to endure the superiority of Constantinople; yet their disaffection was counterbalanced by the inveterate hatred, as well as jealousy, with which they regarded the Lombards. But an impolitic and intemperate persecution, carried on by two or three Greek emperors against a favorite superstition, the worship of images, excited commotions throughout Italy, of which the Lombards took advantage, and easily wrested the exarchate of Ravenna from the Eastern empire (A.D. 752). It was far from the design of the popes to see their nearest enemies so much aggrandized; and any effectual assistance from the Emperor, Constantine Copronymus, would have kept Rome still faithful. But having no hope from his arms, and provoked by his obstinate intolerance, the pontiffs had recourse to France; and the service they had rendered to Pepin led to reciprocal obligations of the greatest magni-

tude. At the request of Stephen II. the new king of France descended from the Alps, drove the Lombards from their recent conquests, and conferred them upon the pope. This memorable donation nearly comprised the modern provinces of Romagna and the March of Ancona.

§ 5. CHARLEMAGNE (A.D. 768–814). — The state of Italy, which had undergone no change for nearly two centuries, was now rapidly verging to a great revolution. Under the shadow of a mighty name the Greek empire had concealed the extent of its decline. That charm was now broken; and the Lombard kingdom, which had hitherto appeared the only competitor in the lists, proved to have lost its own energy in awaiting the occasion for its display. France was far more than a match for the power of Italy, even if she had not been guided by the towering ambition and restless activity of the son of Pepin. It was almost the first exploit of Charlemagne, after the death of his brother Carloman had reunited the Frankish empire under his dominion, to subjugate the kingdom of Lombardy (A.D. 774). Neither Pavia nor Verona, its most considerable cities, interposed any material delay to his arms; and the chief resistance he encountered was from the dukes of Friuli and Benevento, the latter of whom could never be brought into thorough subjection to the conqueror. Italy, however, be the cause what it might, seems to have tempted Charlemagne far less than the dark forests of Germany. For neither the southern provinces nor Sicily could have withstood his power if it had been steadily directed against them. Even Spain hardly drew so much of his attention as the splendor of the prize might naturally have excited. He gained, however, a very important accession to his empire, by conquering from the Saracens the territory contained between the Pyrenees and the Ebro. This was formed into the Spanish March, governed by the Count of Barcelona, part of which at least must be considered as appertaining to France till the twelfth century.

But the most tedious and difficult achievement of Charlemagne was the reduction of the Saxons. The wars with this nation, who occupied nearly the modern circles of Westphalia and Lower Saxony, lasted for thirty years. Whenever the conqueror withdrew his armies, or even his person, the Saxons broke into fresh rebellion, which his unparalleled rapidity of movement seldom failed to crush without delay. From such perseverance on either side, destruction of the weaker could alone result. A large colony of Saxons were finally transplanted into Flanders and Brabant, countries hitherto ill-

peopled, in which their descendants preserved the same unconquerable spirit of resistance to oppression. Many fled to the kingdoms of Scandinavia, and, mingling with the Northmen, who were just preparing to run their memorable career, revenged upon the children and subjects of Charlemagne the devastation of Saxony. The remnant embraced Christianity, their aversion to which had been the chief cause of their rebellions, and acknowledged the sovereignty of Charlemagne —a submission which even Witikind, the second Arminius of Germany, after such irresistible conviction of her destiny, did not disdain to make. But they retained, in the main, their own laws; they were governed by a duke of their own nation, if not of their own election; and for many ages they were distinguished by their original character among the nations of Germany.[8]

The success of Charlemagne on the eastern frontier of his empire against the Sclavonians of Bohemia and Huns or Avars of Pannonia, though obtained with less cost, were hardly less eminent. In all his wars the newly conquered nations, or those whom fear had made dependent allies, were employed to subjugate their neighbors, and the incessant waste of fatigue and the sword was supplied by a fresh population that swelled the expanding circle of dominion. The limits of the new Western empire are not very exactly defined by contemporary writers, nor would it be easy to appreciate the degree of subjection in which the Sclavonian tribes were held. As an organized mass of provinces, regularly governed by imperial officers, it seems to have been nearly bounded, in Germany, by the Elbe, the Saale, the Bohemian mountains, and a line drawn from thence crossing the Danube above Vienna, and prolonged to the Gulf of Istria. Part of Dalmatia was comprised in the Duchy of Friuli. In Italy the empire extended not much beyond the modern frontier of Naples, if we exclude, as was the fact, the Duchy of Benevento from any thing more than a titular subjection. The Spanish boundary, as has been said already, was the Ebro.

§ 6. A seal was put to the glory of Charlemagne when Leo III., in the name of the Roman people, placed upon his head the imperial crown (A.D. 800). His father, Pepin, had borne the title of Patrician, and he had himself exercised, with that title, a regular sovereignty over Rome. Money was coined in his name, and an oath of fidelity was taken by the clergy and people. But the appellation of Emperor

[8] See NOTE VI., "The Subjection of the Saxons."

seemed to place his authority over all his subjects on a new footing. It was full of high and indefinite pretension, tending to overshadow the free election of the Franks by a fictitious descent from Augustus. A fresh oath of fidelity to him as emperor was demanded from his subjects.[9]

§ 7. In analyzing the characters of heroes it is hardly possible to separate altogether the share of fortune from their own. The epoch made by Charlemagne in the history of the world, the illustrious families which prided themselves in him as their progenitor, the very legends of romance, which are full of his fabulous exploits, have cast a lustre around his head, and testify the greatness that has embodied itself in his name. None, indeed, of Charlemagne's wars can be compared with the Saracenic victory of Charles Martel; but *that* was a contest for freedom, *his* for conquest; and fame is more partial to successful aggression than to patriotic resistance. As a scholar, his acquisitions were probably little superior to those of his unrespected son; and in several points of view the glory of Charlemagne might be extenuated by an analytical dissection. But, rejecting a mode of judging equally uncandid and fallacious, we shall find that he possessed in every thing that grandeur of conception which distinguishes extraordinary minds. Like Alexander, he seemed born for universal innovation: in a life restlessly active, we see him reforming the coinage and establishing the legal divisions of money; gathering about him the learned of every country; founding schools and collecting libraries; interfering, but with the tone of a king, in religious controversies; aiming, though prematurely, at the formation of a naval force; attempting, for the sake of commerce, the magnificent enterprise of uniting the Rhine and Danube; and meditating to mould the discordant codes of Roman and barbarian laws into a uniform system.

The great qualities of Charlemagne were, indeed, alloyed by the vices of a barbarian and a conqueror. Nine wives, whom he divorced with very little ceremony, attest the license of his private life, which his temperance and frugality can hardly be said to redeem. Unsparing of blood, though not constitutionally cruel, and wholly indifferent to the means which his ambition prescribed, he beheaded in one day four thousand Saxons—an act of atrocious butchery, after which his persecuting edicts, pronouncing the pain of death against those who refused baptism, or even who ate flesh during Lent, seem scarcely worthy of notice. This union of barba-

[9] See Note VII., "Charlemagne, Emperor."

rous ferocity with elevated views of national improvement might suggest the parallel of Peter the Great. But the degrading habits and brute violence of the Muscovite place him at an immense distance from the restorer of the empire.

A strong sympathy for intellectual excellence was the leading characteristic of Charlemagne, and this undoubtedly biased him in the chief political error of his conduct—that of encouraging the power and pretensions of the hierarchy. But, perhaps, his greatest eulogy is written in the disgraces of succeeding times and the miseries of Europe. He stands alone, like a beacon upon a waste, or a rock in the broad ocean. His sceptre was the bow of Ulysses, which could not be drawn by any weaker hand. In the Dark Ages of European history the reign of Charlemagne affords a solitary resting-place between two long periods of turbulence and ignominy, deriving the advantages of contrast both from that of the preceding dynasty and of a posterity for whom he had formed an empire which they were unworthy and unequal to maintain.

§ 8. LOUIS THE DEBONAIR (A.D. 814–840).—Under this prince, called by the Italians the Pious, and by the French the Debonair, or good-natured,[10] the mighty structure of his father's power began rapidly to decay. I do not know that Louis deserves so much contempt as he has undergone; but historians have in general more indulgence for splendid crimes than for the weaknesses of virtue. There was no defect in Louis's understanding or courage; he was accomplished in martial exercises, and in all the learning which an education, excellent for that age, could supply. No one was ever more anxious to reform the abuses of administration; and whoever compares his capitularies with those of Charlemagne will perceive that, as a legislator, he was even superior to his father. The fault lay entirely in his heart; and this fault was nothing but a temper too soft and a conscience too strict. It is not wonderful that the empire should have been speedily dissolved; a succession of such men as Charles Martel, Pepin, and Charlemagne could alone have preserved its integrity; but the misfortunes of Louis and his people were immediately owing to the following errors of his conduct.

Soon after his accession Louis thought fit to associate his eldest son, Lothaire, to the empire, and to confer the provinces of Bavaria and Aquitaine, as subordinate kingdoms,

[10] These names meant the same thing. *Pius* had, even in good Latin, the sense of *mitis*, meek, forbearing, or what the French call *débonnaire*.

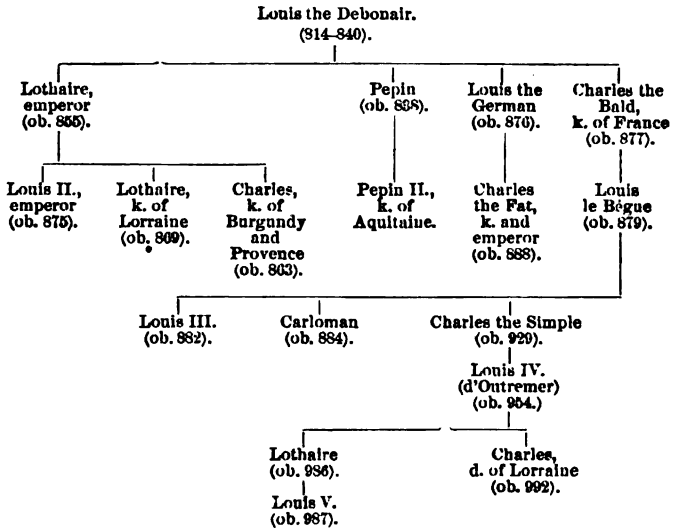
upon the two younger, Louis and Pepin, A.D. 817. The step was, in appearance, conformable to his father's policy, who had acted towards himself in a similar manner. But such measures are not subject to general rules, and exact a careful regard to characters and circumstances. The principle, however, which regulated this division was learned from Charlemagne, and could alone, if strictly pursued, have given unity and permanence to the empire. The elder brother was to preserve his superiority over the others, so that they should neither make peace nor war, nor even give answer to ambassadors, without his consent. Upon the death of either no further partition was to be made; but whichever of his children might become the popular choice was to inherit the whole kingdom, under the same superiority of the head of the family. This compact was, from the beginning, disliked by the younger brothers; and an event upon which Louis does not seem to have calculated soon disgusted his colleague, Lothaire. Judith of Bavaria, the emperor's second wife, an ambitious woman, bore him a son, by name Charles, whom both parents were naturally anxious to place on an equal footing with his brothers. But this could only be done at the expense of Lothaire, who was ill disposed to see his empire still further dismembered for this child of a second bed. Louis passed his life in a struggle with three undutiful sons, who abused his paternal kindness by constant rebellions.

These were rendered more formidable by the concurrence of a different class of enemies, whom it had been another error of the emperor to provoke. Charlemagne had assumed a thorough control and supremacy over the clergy; and his son was perhaps still more vigilant in chastising their irregularities, and reforming their rules of discipline. But to this, which they had been compelled to bear at the hands of the first, it was not equally easy for the second to obtain their submission. Louis, therefore, drew on himself the inveterate enmity of men who united with the turbulence of martial nobles a skill in managing those engines of offense which were peculiar to their order, and to which the implicit devotion of his character laid him very open. Yet, after many vicissitudes of fortune, and many days of ignominy, his wishes were eventually accomplished.

§ 9. Upon the death of Louis the Debonair, his youngest son, Charles, surnamed the Bald, obtained most part of France, while Germany fell to the share of Louis, and the rest of the imperial dominions, with the title, to the eldest, Lothair. This partition was the result of a sanguinary,

though short, contest; and it gave a fatal blow to the empire of the Franks. For the treaty of Verdun in 843 abrogated the sovereignty that had been attached to the eldest brother and to the imperial name in former partitions: each held his respective kingdom as an independent right. This is the epoch of a final separation between the French and German members of the empire. Its millenary was celebrated by some of the latter nation in 1843.[11]

SUCCESSORS OF LOUIS THE DEBONAIR.



The subsequent partitions made among the children of these brothers are of too rapid succession to be here related. In about forty years the empire was nearly reunited under Charles the Fat, son of Louis of Germany; but his short and inglorious reign ended in his deposition. From this time the possession of Italy was contested among her native princes; Germany fell at first to an illegitimate descendant of Charlemagne, and in a short time was entirely lost by his

[11] In the division made by the treaty of Verdun, the kingdom of France, which fell to Charles the Bald, had for its eastern boundary the Meuse, the Saône, and the Rhone; which, nevertheless, can only be understood of the Upper Meuse, since Brabant was certainly not comprised in it. Lothaire, the elder brother, besides Italy, had a kingdom called Lorrain, from his name (Lotharingia), extending from the mouth of the Rhine to Provence, bounded by that river on one frontier, by France on the other. Louis took all beyond the Rhine, and was usually styled the Germanic.

family; two kingdoms, afterwards united, were formed by usurpers out of what was then called Burgundy, and comprised the provinces between the Rhone and the Alps, with Franche Comté and great part of Switzerland.[12] In France the Carlovingian kings continued for another century; but their line was interrupted two or three times by the election or usurpation of a powerful family, the counts of Paris and Orleans, who ended, like the old mayors of the palace, in dispersing the phantoms of royalty they had professed to serve. Hugh Capet, the representative of this House, upon the death of Louis V., placed himself upon the throne; thus founding the third and most permanent race of French sovereigns. Before this happened, the descendants of Charlemagne had sunk into insignificance, and retained little more of France than the city of Laon. The rest of the kingdom had been seized by the powerful nobles, who, with the nominal fidelity of the feudal system, maintained its practical independence and rebellious spirit.

§ 10. The second period of Carlovingian history, or that which elapsed from the reign of Charles the Bald to the accession of Hugh Capet, must be reckoned the transitional state, through scenes of barbarous anarchy, from the artificial scheme devised by Charlemagne, in which the Roman and German elements of civil policy were rather in conflict than in union, to a new state of society—the feudal, which, though pregnant itself with great evil, was the means both of preserving the frame of European policy from disintegration, and of elaborating the moral and constitutional principles upon which it afterwards rested.

This period exhibits, upon the whole, a failure of the grand endeavor made by Charlemagne for the regeneration of his empire. This proceeded very much from the common chances of hereditary succession, especially when not counterbalanced by established powers independent of it. Three of his name, Charles the Bald, the Fat, and the Simple, had time to pull down what the great legislator and conqueror had erected. Encouraged by their pusillanimity and weakness, the nobility strove to revive the spirit of the seventh century. They entered into a coalition with the bishops, though Charles the Bald had often sheltered himself behind the crosier; and they compelled his son, Louis the Stammerer, not only to confirm their own privileges and those of the Church, but to style himself "King, by the grace of God and election of the people;" which, indeed, according to the

[12] See NOTE VIII., "On the kingdom of Burgundy."

established constitution, was no more than truth, since the absolute right to succession was only in the family. The inability of the crown to protect its subjects from their invaders rendered this assumption of aristocratic independence absolutely necessary. In this age of agony, Sismondi well says, the nation began to revive; new social bodies sprung from the carcass of the great empire. France, so defenseless under the Bald and the Fat Charleses, bristled with castles before 930. She renewed the fable of Deucalion; she sowed stones, and armed men rose out of them. The lords surrounded themselves with vassals; and had not the Norman incursions ceased before, they would have met with a much more determined resistance than in the preceding century.[13]

The theory propounded by Thierry, and accepted by many French writers, to elucidate the Carlovingian period, requires a brief notice. Thierry maintains that the key to all the revolutions in two centuries is to be found in the antipathy of the Romans, that is, the ancient inhabitants, to the Franks or Germans. The latter were represented by the house of Charlemagne; the former by that of Robert the Brave, through its valiant descendants, Eudes, Robert, and Hugh Capet. But though the differences of origin and language, so far as they existed, might be by no means unimportant in the great revolution near the close of the tenth century, they can not be relied upon as sufficiently explaining its cause. The partisans of either family were not exclusively of one blood. The house of Capet itself was not of Roman, but probably of Saxon descent. It is certainly probable that the Neustrian French had come to feel a greater sympathy with the house of Capet than with a line of kings who rarely visited their country, and whom they could not but contemplate as in some adverse relation to their natural and popular chiefs. But the national voice was not greatly consulted in those ages. It is remarkable that several writers of the nineteenth century, however they may sometimes place the true condition of the people in a vivid light, are constantly relapsing into a democratic theory. They do not by any means underrate the oppressed and almost servile condition of the peasantry and burgesses, when it is their aim to draw a picture of society; yet in reasoning on a political revolution, such as the decline and fall of the German dynasty, they ascribe to these degraded classes both the will and the power to effect it. The proud nationality which spurned

[13] Sismondi, "Hist. des Français," iii., 218, 378; iv., 9.

a foreign line of princes could not be felt by an impoverished and afflicted commonalty.

§ 11. These were times of great misery to the people, and the worst, perhaps, that Europe has ever known. Even under Charlemagne, we have abundant proofs of the calamities which the people suffered. The light which shone around him was that of a consuming fire. The free proprietors, who had once considered themselves as only called upon to resist foreign invasion, were harassed by endless expeditions, and dragged away to the Baltic Sea, or the banks of the Drave. Many of them, as we learn from his Capitularies, became ecclesiastics to avoid military conscription. But far worse must have been their state under the lax government of succeeding times, when the dukes and counts, no longer checked by the vigorous administration of Charlemagne, were at liberty to play the tyrants in their several territories, of which they now became almost the sovereigns. The poorer landholders accordingly were forced to bow their necks to the yoke; and, either by compulsion or through hope of being better protected, submitted their independent patrimonies to the feudal tenure.

But evils still more terrible than these political abuses were the lot of those nations who had been subject to Charlemagne. They, indeed, may appear to us little better than ferocious barbarians; but they were exposed to the assaults of tribes, in comparison of whom they must be deemed humane and polished. Each frontier of the empire had to dread the attack of an enemy. The coasts of Italy were continually alarmed by the Saracens of Africa, who possessed themselves of Sicily and Sardinia, and became masters of the Mediterranean Sea. Though the Greek dominions in the south of Italy were chiefly exposed to them, they twice insulted and ravaged the territory of Rome (A.D. 846–849); nor was there any security even in the neighborhood of the maritime Alps, where, early in the tenth century, they settled a piratical colony.

§ 12. Much more formidable were the foes by whom Germany was assailed. The Sclavonians, a widely extended people, whose language is still spoken upon half the surface of Europe, had occupied the countries of Bohemia, Poland, and Pannonia,[14] on the eastern confines of the empire, and

[14] I am sensible of the awkward effect of introducing this name from a more ancient geography, but it saves a circumlocution still more awkward. Austria would convey an imperfect idea, and the Austrian dominions could not be named without a tremendous anachronism.

from the time of Charlemagne acknowledged its superiority. But at the end of the ninth century, a Tartarian tribe, the Hungarians, overspreading that country which since has borne their name, and moving forward like a vast wave, brought a dreadful reverse upon Germany. Their numbers were great, their ferocity untamed. They fought with light cavalry and light armor, trusting to their showers of arrows, against whom the swords and lances of the European armies could not avail. The memory of Attila was renewed in the devastations of these savages, who, if they were not his compatriots, resembled them both in their countenances and customs. All Italy, all Germany, and the south of France, felt this scourge; till Henry the Fowler and Otho the Great drove them back by successive victories within their own limits, where, in a short time, they learned peaceful arts, adopted the religion and followed the policy of Christendom (A.D. 934–954).

§ 13. If any enemies could be more destructive than these Hungarians, they were the pirates of the north, known commonly by the name of Normans. The love of a predatory life seems to have attracted adventurers of different nations to the Scandinavian seas, from whence they infested, not only by maritime piracy, but continual invasions, the northern coasts both of France and Germany. The causes of their sudden appearance are inexplicable, or at least could only be sought in the ancient traditions of Scandinavia. For, undoubtedly, the coasts of France and England were as little protected from depredations under the Merovingian kings, and those of the Heptarchy, as in subsequent times. Yet only one instance of an attack from this side is recorded, and that before the middle of the sixth century, till the age of Charlemagne. In 787 the Danes, as we call those northern plunderers, began to infest England, which lay most immediately open to their incursions. Soon afterwards they ravaged the coasts of France. Charlemagne repulsed them by means of his fleets; yet they pillaged a few places during his reign. It is said that, perceiving one day, from a port in the Mediterranean, some Norman vessels which had penetrated into that sea, he shed tears, in anticipation of the miseries which awaited his empire. In Louis's reign their depredations upon the coast were more incessant, but they did not penetrate into the inland country till that of Charles the Bald. The wars between that prince and his family, which exhausted France of her noblest blood, the insubordination of the provincial governors, even the instigation of some

of Charles's enemies, laid all open to their inroads. They adopted an uniform plan of warfare both in France and England; sailing up navigable rivers in their vessels of small burden, and fortifying the islands which they occasionally found, they made these intrenchments at once an asylum for their women and children, a repository for their plunder, and a place of retreat from superior force. After pillaging a town, they retired to these strongholds or to their ships; and it was not till 872 that they ventured to keep possession of Angers, which, however, they were compelled to evacuate. Sixteen years afterwards they laid siege to Paris, and committed the most ruinous devastations on the neighboring country. As these Normans were unchecked by religious awe, the rich monasteries, which had stood harmless amidst the havoc of Christian war, were overwhelmed in the storm. Perhaps they may have endured some irrecoverable losses of ancient learning; but their complaints are of monuments disfigured, bones of saints and kings dispersed, treasures carried away. St. Denis redeemed its abbot from captivity with six hundred and eighty-five pounds of gold. All the chief abbeys were stripped about the same time, either by the enemy, or for contributions to the public necessity. So impoverished was the kingdom, that in 860 Charles the Bald had great difficulty in collecting three thousand pounds of silver to subsidize a body of Normans against their countrymen. The kings of France, too feeble to prevent or repel these invaders, had recourse to the palliative of buying peace at their hands, or rather precarious armistices, to which reviving thirst of plunder soon put an end. At length Charles the Simple, in 918, ceded a great province, which they had already partly occupied, partly rendered desolate, and which has derived from them the name of Normandy. Ignominious as this appears, it proved no impolitic step. Rollo, the Norman chief, with all his subjects, became Christians and Frenchmen; and the kingdom was at once relieved from a terrible enemy, and strengthened by a race of hardy colonists. No measure was so conducive to the revival of France from her abasement in the ninth century as the cession of Normandy. The Normans had been distinguished by a peculiar ferocity towards priests; yet when their conversion to Christianity was made the condition of their possessing Normandy, they were ready enough to comply, and in another generation became among the most devout of the French nation. An explanation of the new zeal for Christianity which sprung up among the Normans may be found in the impor-

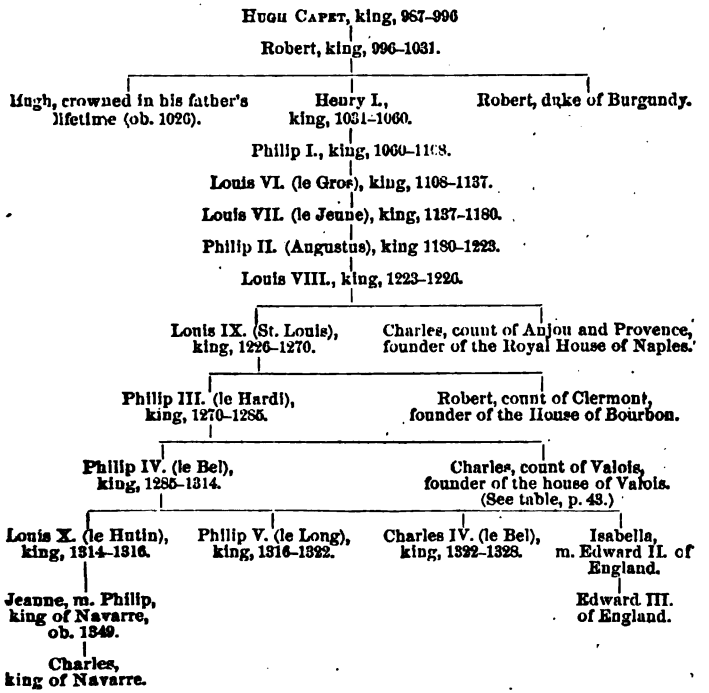
tant circumstance that, having few women with them, they took wives (they had made widows enough) from the native inhabitants. These taught their own faith to their children. They taught also their own language; and in no other manner can we so well account for the rapid extinction of that of Scandinavia in that province of France.

§ 14. The accession of HUGH CAPET (A.D. 987) had not the immediate effect of restoring the royal authority over France. His own very extensive fief was now, indeed, united to the crown; but a few great vassals occupied the remainder of the kingdom. Six of these obtained, at a subsequent time, the exclusive appellation of peers of France—the Count of Flanders, whose fief stretched from the Scheldt to the Somme; the Count of Champagne; the Duke of Normandy, to whom Brittany did homage; the Duke of Burgundy, on whom the Count of Nivernois seems to have depended; the Duke of Aquitaine, whose territory, though less than the ancient kingdom of that name, comprehended Poitou, Limousin, and most of Guienne, with the feudal superiority over the Angoumois, and some other central districts; and, lastly, the Count of Toulouse, who possessed Languedoc, with the small countries of Quercy and Rouergue, and the superiority over Auvergne. Besides these six, the Duke of Gascony, not long afterwards united with Aquitaine, the counts of Anjou, Ponthieu, and Vermandois, the Viscount of Bourges, the lords of Bourbon and Coucy, with one or two other vassals, held immediately of the last Carlovingian kings. This was the aristocracy, of which Hugh Capet usurped the direction; for the suffrage of no general assembly gave a sanction to his title. On the death of Louis V. he took advantage of the absence of Charles, duke of Lorraine, who, as the deceased king's uncle, was nearest heir, and procured his own consecration at Rheims. At first he was by no means acknowledged in the kingdom; but his contest with Charles proving successful, the chief vassals ultimately gave at least a tacit consent to the usurpation, and permitted the royal name to descend undisputed upon his posterity. But this was almost the sole attribute of sovereignty which the first kings of the third dynasty enjoyed.

§ 15. For a long period before and after the accession of that family, France has, properly speaking, no national history. The character or fortune of those who were called its kings were little more important to the majority of the nation than those of foreign princes. Undoubtedly, the degree of influence which they exercised with respect to the vassals

of the crown varied according to their power and their proximity. Over Guienne and Toulouse the first four Capets had very little authority; nor do they seem to have ever received assistance from them either in civil or national wars. With provinces nearer to their own domains, such as Normandy and Flanders, they were frequently engaged in alliance or hostility; but each seemed rather to proceed from

SUCCESSORS OF HUGH CAPET.



the policy of independent states than from the relation of a sovereign towards his subjects.

It should be remembered that, when the fiefs of Paris and Orleans are said to have been reunited by Hugh Capet to the crown, little more is understood than the feudal superiority over the vassals of these provinces. As the kingdom of Charlemagne's posterity was split into a number of great fiefs, so each of these contained many barons, possessing ex-

clusive immunities within their own territories, waging war at their pleasure, administering justice to their military tenants and other subjects, and free from all control beyond the conditions of the feudal compact. At the accession of Louis VI. in 1108, the cities of Paris, Orleans, and Bourges, with the immediately adjacent districts, formed the most considerable portion of the royal domain. A number of petty barons, with their fortified castles, intercepted the communication between these, and waged war against the king almost under the walls of his capital. It cost Louis a great deal of trouble to reduce the lords of Montlhéry, and other places within a few miles of Paris. Under this prince, however, who had more activity than his predecessors, the royal authority considerably revived. From his reign we may date the systematic rivalry of the French and English monarchies. Hostilities had several times occurred between Philip I. and the two Williams; but the wars that began under Louis VI. lasted, with no long interruption, for three centuries and a half, and form, indeed, the most leading feature of French history during the Middle Ages. Of all the royal vassals the dukes of Normandy were the proudest and most powerful. Though they had submitted to do homage, they could not forget that they came in originally by force, and that in real strength they were fully equal to their sovereign. Nor had the conquest of England any tendency to diminish their pretensions.

§ 16. Louis VII. ascended the throne (A.D. 1137) with better prospects than his father. He had married Eleanor, heiress of the great duchy of Guienne. But this union, which promised an immense accession of strength to the crown, was rendered unhappy by the levities of that princess. Repudiated by Louis, who felt rather as a husband than a king, Eleanor immediately married Henry II. of England, who, already inheriting Normandy from his mother and Anjou from his father, became possessed of more than one-half of France, and an overmatch for Louis, even if the great vassals of the crown had been always ready to maintain its supremacy. One might venture, perhaps, to conjecture that the sceptre of France would eventually have passed from the Capets to the Plantagenets, if the vexatious quarrel with Becket at one time, and the successive rebellions fomented by Louis at a later period, had not embarrassed the great talents and ambitious spirit of Henry.

§ 17. But the scene quite changed when Philip Augustus, son of Louis VII., came upon the stage (A.D. 1180). No

prince comparable to him in systematic ambition and military enterprise had reigned in France since Charlemagne. From his reign the French monarchy dates the recovery of its lustre. He wrested from the Count of Flanders the Vermandois (that part of Picardy which borders on the Isle of France and Champagne),[15] and, subsequently, the county of Artois. But the most important conquests of Philip were obtained against the kings of England. Even Richard I., with all his prowess, lost ground in struggling against an adversary not less active, and more politic, than himself. But when John not only took possession of his brother's dominions, but confirmed his usurpation by the murder, as was very probably surmised, of the heir, Philip, artfully taking advantage of the general indignation, summoned him as his vassal to the court of his peers. John demanded a safe-conduct. Willingly, said Philip; let him come unmolested. And return? inquired the English envoy. If the judgment of his peers permit him, replied the king. By all the saints of France, he exclaimed, when further pressed, he shall not return unless acquitted. The Bishop of Ely still remonstrated that the Duke of Normandy could not come without the King of England; nor would the barons of that country permit their sovereign to run the risk of death or imprisonment. What of that, my lord bishop? cried Philip. It is well known that my vassal the Duke of Normandy acquired England by force. But if a subject obtains any accession of dignity, shall his paramount lord therefore lose his rights?

John, not appearing at his summons, was declared guilty of felony, and his fiefs confiscated. The execution of this sentence was not intrusted to a dilatory arm. Philip poured his troops into Normandy, and took town after town, while the King of England, infatuated by his own wickedness and cowardice, made hardly an attempt at defense. In two years Normandy, Maine, and Anjou were irrecoverably lost. Poitou and Guienne resisted longer; but the conquest of the first was completed by Louis VIII., successor of Philip (A.D. 1223), and the subjection of the second seemed drawing near, when the arms of Louis were diverted to different but scarcely less advantageous objects.

§ 18. The country of Languedoc, subject to the counts of Toulouse, had been unconnected, beyond any other part of France, with the kings of the house of Capet. Louis VII., having married his sister to the reigning count, and travelled himself through the country, began to exercise some degree

[15] The principal towns of the Vermandois are St. Quentin and Peronne.

of authority, chiefly in confirming the rights of ecclesiastical bodies, who were vain, perhaps, of this additional sanction to the privileges which they already possessed. But the remoteness of their situation, with a difference in language and legal usages, still kept the people of this province apart from those of the north of France.

About the middle of the twelfth century, certain religious opinions, which it is not easy, nor, for our present purpose, material to define, but, upon every supposition, exceedingly adverse to those of the Church,[16] began to spread over Languedoc. Those who imbibed them have borne the name of Albigeois, though they were in no degree peculiar to the district of Albi. In despite of much preaching and some persecution, these errors made a continual progress; till Innocent III., in 1198, dispatched commissaries, the seed of the inquisition, with ample powers both to investigate and to chastise. Raymond VI., count of Toulouse, whether inclined towards the innovators, as was then the theme of reproach, or, as is more probable, disgusted with the insolent interference of the pope and his missionaries, provoked them to pronounce a sentence of excommunication against him. Though this was taken off, he was still suspected; and upon the assassination of one of the inquisitors, in which Raymond had no concern, Innocent published a crusade both against the count and his subjects, calling upon the King of France, and the nobility of that kingdom, to take up the cross, with all the indulgences usually held out as allurements to religious warfare (A.D. 1208). Though Philip would not interfere, a prodigious number of knights undertook this enterprise, led partly by ecclesiastics, and partly by some of the first barons in France. It was prosecuted with every atrocious barbarity which superstition, the mother of crimes, could inspire. Languedoc, a country, for that age, flourishing and civilized, was laid waste by these desolators; her cities burned; her inhabitants swept away by fire and the sword.

The Crusaders were commanded by Simon de Montfort, a man like Cromwell, whose intrepidity, hypocrisy, and ambition marked him for the hero of a holy war. The energy of such a mind, at the head of an army of enthusiastic warriors, may well account for the successes which then appeared miraculous. But Montfort was cut off before he could realize his ultimate object, an independent principality; and Raymond was able to bequeath the inheritance of his ancestors

[16] For the real tenets of the Languedocian sectaries I refer to the last chapter of the present work, where the subject will be taken up again.

to his son. Rome, however, was not yet appeased; upon some new pretense she raised up a still more formidable enemy against the younger Raymond (A.D. 1222). Louis VIII. suffered himself to be diverted from the conquest of Guienne, to take the cross against the supposed patron of heresy. After a short and successful war, Louis, dying prematurely, left the crown of France to a son only twelve years old. But the Count of Toulouse was still pursued, till, hopeless of safety in so unequal a struggle, he concluded a treaty upon very hard terms. By this he ceded the greater part of Languedoc (A.D. 1229); and, giving his daughter in marriage to Alphonso, brother of Louis IX., confirmed to them, and to the king in failure of their descendants, the reversion of the rest, in exclusion of any other children whom he might have. Thus fell the ancient house of Toulouse, through one of those strange combinations of fortune which thwart the natural course of human prosperity, and disappoint the plans of wise policy and beneficent government.

§ 19. The rapid progress of royal power under Philip Augustus and his son had scarcely given the great vassals time to reflect upon the change which it produced in their situation. The crown, with which some might singly have measured their forces, was now an equipoise to their united weight. The minority of Louis IX. (A.D. 1226), guided only by his mother, the regent, Blanche of Castile, seemed to offer a favorable opportunity for recovering their former situation. They broke out into open rebellion; but the address of Blanche detached some from the league, and her firmness subdued the rest. For the first fifteen years of Louis's reign, the struggle was frequently renewed; till repeated humiliations convinced the refractory that the throne was no longer to be shaken.

But Louis IX. had methods of preserving his ascendency very different from military prowess. That excellent prince was perhaps the most eminent pattern of unswerving probity and Christian strictness of conscience that ever held the sceptre in any country. There is a peculiar beauty in the reign of St. Louis, because it shows the inestimable benefit which a virtuous king may confer on his people, without possessing any distinguished genius. For nearly half a century that he governed France there is not the smallest want of moderation or disinterestedness in his actions; and yet he raised the influence of the monarchy to a much higher point than the most ambitious of his predecessors. To the surprise of his own and later times, he restored great part of his con-

quests to Henry III., whom he might naturally hope to have expelled from France (A.D. 1259). It would indeed have been a tedious work to conquer Guienne, which was full of strong places; and the subjugation of such a province might have alarmed the other vassals of his crown. But it is the privilege only of virtuous minds to perceive that wisdom resides in moderate counsels: no sagacity ever taught a selfish and ambitious sovereign to forego the sweetness of immediate power. An ordinary king, in the circumstances of the French monarchy, would have fomented, or, at least, have rejoiced in, the dissensions which broke out among the principal vassals; Louis constantly employed himself to reconcile them. In this, too, his benevolence had all the effects of far-sighted policy. It had been the practice of his last three predecessors to interpose their mediation in behalf of the less powerful classes, the clergy, the inferior nobility, and the inhabitants of chartered towns. Thus the supremacy of the crown became a familiar idea; but the perfect integrity of St. Louis wore away all distrust, and accustomed even the most jealous feudatories to look upon him as their judge and legislator. And as the royal authority was hitherto shown only in its most amiable prerogatives, the dispensation of favor and the redress of wrong, few were watchful enough to remark the transition of the French constitution from a feudal league to an absolute monarchy.

It was perhaps fortunate for the display of St. Louis's virtues that the throne had already been strengthened by the less innocent exertions of Philip Augustus and Louis VIII. A century earlier his mild and scrupulous character, unsustained by great actual power, might not have inspired sufficient awe. But the crown was now grown so formidable, and Louis was so eminent for his firmness and bravery, qualities without which every other virtue would have been ineffectual, that no one thought it safe to run wantonly into rebellion, while his disinterested administration gave no one a pretext for it. Hence the latter part of his reign was altogether tranquil, and employed in watching over the public peace and the security of travellers; administering justice personally, or by the best counsellors; and compiling that code of feudal customs called the Establishments of St. Louis, which is the first monument of legislation after the accession of the house of Capet. Not satisfied with the justice of his own conduct, Louis aimed at that act of virtue which is rarely practiced by private men, and had perhaps no example among kings—restitution. Commissaries were appointed to

inquire what possessions had been unjustly annexed to the royal domain during the last two reigns. These were restored to the proprietors, or, where length of time had made it difficult to ascertain the claimant, their value was distributed among the poor.

The principal weakness of this king, which almost effaced all the good effects of his virtues, was superstition. No man was ever more impressed than St. Louis with a belief in the duty of exterminating all enemies to his own faith. With these he thought no layman ought to risk himself in the perilous ways of reasoning, but to make answer with his sword as stoutly as a strong arm and a fiery zeal could carry that argument. Though, fortunately for his fame, the persecution against the Albigeois, which had been the disgrace of his father's short reign, was at an end before he reached manhood, he suffered a hypocritical monk to establish a tribunal at Paris for the suppression of heresy, where many innocent persons suffered death. But no events in his life were more memorable than his two crusades, which lead us to look back on the nature and circumstances of those most singular phenomena in European history. Though the crusades involved all the western nations of Europe, without belonging particularly to any one, yet, as France was more distinguished than the rest in most of those enterprises, I shall introduce the subject as a sort of digression from the main course of French history.

§ 20. Even before the violation of Palestine by the Saracen arms it had been a prevailing custom among the Christians of Europe to visit those scenes rendered interesting by religion, partly through delight in the effects of local association, partly in obedience to the prejudices or commands of superstition. These pilgrimages became more frequent in later times, in spite, perhaps in consequence, of the danger and hardships which attended them. For a while the Mohammedan possessors of Jerusalem permitted, or even encouraged, a devotion which they found lucrative; but this was interrupted whenever the ferocious insolence with which they regarded all infidels got the better of their rapacity. During the eleventh century, when, from increasing superstition, and some particular fancies, the pilgrims were more numerous than ever, a change took place in the government of Palestine, which was overrun by the Turkish hordes from the North. These barbarians treated the visitors of Jerusalem with still greater contumely, mingling with their Mohammedan bigotry a consciousness of strength

and courage, and a scorn of the Christians, whom they knew only by the debased natives of Greece and Syria, or by these humble and defenseless palmers. When such insults became known throughout Europe, they excited a keen sensation of resentment among nations equally courageous and devout, which, though wanting as yet any definite means of satisfying itself, was ripe for whatever favorable conjuncture might arise.

Twenty years before the first crusade Gregory VII. had projected the scheme of embodying Europe in arms against Asia—a scheme worthy of his daring mind, and which, perhaps, was never forgotten by Urban II., who in every thing loved to imitate his great predecessor. This design of Gregory was founded upon the supplication of the Greek emperor Michael, which was renewed by Alexius Comnenus to Urban with increased importunity. The Turks had now taken Nice, and threatened, from the opposite shore, the very walls of Constantinople. Every one knows whose hand held the torch to that inflammable mass of enthusiasm that pervaded Europe; the hermit of Picardy, who, roused by witnessed wrongs and imagined visions, journeyed from land to land, the apostle of a holy war. The preaching of Peter was powerfully seconded by Urban (A.D. 1095). In the councils of Piacenza and of Clermont the deliverance of Jerusalem was eloquently recommended and exultingly undertaken. "It is the will of God!" was the tumultuous cry that broke from the heart and lips of the assembly at Clermont; and these words afford at once the most obvious and most certain explanation of the leading principle of the Crusades.

Every means was used to excite an epidemical frenzy; the remission of penance, the dispensation from those practices of self-denial which superstition imposed or suspended at pleasure, the absolution of all sins, and the assurance of eternal felicity. None doubted that such as perished in the war received immediately the reward of martyrdom. False miracles and fanatical prophecies, which were never so frequent, wrought up the enthusiasm to a still higher pitch. And these devotional feelings, which are usually thwarted and balanced by other passions, fell in with every motive that could influence the men of that time; with curiosity, restlessness, the love of license, thirst for war, emulation, ambition. Of the princes who assumed the cross, some probably from the beginning speculated upon forming independent establishments in the East. In later periods the temporal benefits of undertaking a crusade undoubtedly blended themselves with less selfish considerations. Men

resorted to Palestine, as in modern times they have done to the colonies, in order to redeem their fame or repair their fortune. Thus Gui de Lusignan, after flying from France for murder, was ultimately raised to the throne of Jerusalem. To the more vulgar class were held out inducements which, though absorbed in the overruling fanaticism of the first crusade, might be exceedingly efficacious when it began rather to flag. During the time that a Crusader bore the cross he was free from suit for his debts, and the interest of them was entirely abolished; he was exempted, in some instances at least, from taxes, and placed under the protection of the Church, so that he could not be impleaded in any civil court, except on criminal charges, or disputes relating to land.

None of the sovereigns of Europe took a part in the *First Crusade;* but many of their chief vassals, great part of the inferior nobility, and a countless multitude of the common people. Numbers of women and children swelled the crowd; it appeared a sort of sacrilege to repel any one from a work which was considered as the manifest design of Providence. But if it were lawful to interpret the will of Providence by events, few undertakings have been more branded by its disapprobation than the Crusades. So many crimes and so much misery have seldom been accumulated in so short a space as in the three years of the first expedition. We should be warranted by contemporary writers in stating the loss of the Christians alone during this period at nearly a million; but at the least computation it must have exceeded half that number. To engage in the crusade, and to perish in it, were almost synonymous. Few of those myriads who were mustered in the plains of Nice returned to gladden their friends in Europe with the story of their triumph at Jerusalem. Besieging alternately, and besieged in Antioch, they drained to the lees the cup of misery: three hundred thousand sat down before that place; next year there remained but a sixth part to pursue the enterprise. But their losses were least in the field of battle; the intrinsic superiority of European prowess was constantly displayed; the angel of Asia, to apply the bold language of our poet, high and unmatchable, where her rival was not, became a fear; and the Christian lances bore all before them in their shock from Nice to Antioch, Edessa, and Jerusalem (A.D. 1099).[17]

[17] The work of Mailly, entitled L'Esprit des Croisades, is deserving of considerable praise for its diligence and impartiality. It carries the history, however, no farther than the first expedition. Gibbon's two chapters on the Crusades, though not without inaccuracies, are a brilliant portion of his great work. Several new documents have been collected by the industry of the modern historians of the Crusades, Michaud

The conquests obtained at such a price by the first crusade were chiefly comprised in the maritime parts of Syria. Except the state of Edessa beyond the Euphrates,[18] which, in its best days, extended over great part of Mesopotamia, the Latin possessions never reached more than a few leagues from the sea. Within the barrier of Mount Libanus their arms might be feared, but their power was never established; and the prophet was still invoked in the mosques of Aleppo and Damascus. The principality of Antioch to the north, the kingdom of Jerusalem with its feudal dependencies of Tripoli and Tiberius to the south, were assigned, the one to Boemond, a brother of Robert Guiscard, count of Apulia, the other to Godfrey of Boulogne, whose extraordinary merit had justly raised him to a degree of influence with the chief Crusaders that has been sometimes confounded with a legitimate authority. In the course of a few years Tyre, Ascalon, and the other cities upon the sea-coast, were subjected by the successors of Godfrey on the throne of Jerusalem. But as their enemies had been stunned, not killed, by the Western storm, the Latins were constantly molested by the Mohammedans of Egypt and Syria. They were exposed as the outposts of Christendom, with no respite and few resources.

A *Second Crusade* (A.D. 1147), in which the Emperor Conrad III. and Louis VII. of France were engaged, each with seventy thousand cavalry, made scarce any diversion; and that vast army wasted away in the passage of Natolia.

The decline of the Christian establishments in the East is ascribed by William of Tyre to the extreme viciousness of their manners, to the adoption of European arms by the Orientals, and to the union of the Mohammedan principalities under a single chief. Without denying the operation of these causes, and especially the last, it is easy to perceive one more radical than all the three—the inadequacy of their means of self-defense. The kingdom of Jerusalem was guarded only, exclusive of European volunteers, by the feudal service of 866 knights, attended each by four archers on horseback, by a militia of 5075 burghers, and by a conscription, in great exigencies, of the remaining population. William of Tyre mentions an army of 1300 horse and 15,000 foot, as the greatest which had ever been collected, and predicts

and Wilken. The original writers are chiefly collected in two folio volumes, entitled Gesta Dei per Francos, Hanover, 1611.

[18] Edessa was a little Christian principality, surrounded by, and tributary to, the Turks. The inhabitants invited Baldwin, on his progress in the first crusade, and he made no great scruple of supplanting the reigning prince, who indeed is represented as a tyrant and usurper.

the utmost success from it, if wisely conducted. This was a little before the irruption of Saladin. Nothing can more strikingly evince the ascendency of Europe than the resistance of these Frankish acquisitions in Syria during nearly two hundred years. Several of their victories over the Moslems were obtained against such disparity of numbers, that they may be compared with whatever is most illustrious in history or romance. These, perhaps, were less due to the descendants of the first Crusaders, settled in the Holy Land, than to those volunteers from Europe whom martial ardor and religious zeal impelled to the service. It was the penance commonly imposed upon men of rank for the most heinous crimes, to serve a number of years under the banner of the cross. Thus a perpetual supply of warriors was poured in from Europe; and in this sense the Crusades may be said to have lasted without intermission during the whole period of the Latin settlements. Of these defenders the most renowned were the military orders of the Knights of the Temple and of the Hospital of St. John; instituted, the one in 1124, the other in 1118, for the sole purpose of protecting the Holy Land. The Teutonic order, established in 1190, when the kingdom of Jerusalem was falling, soon diverted its schemes of holy warfare to a very different quarter of the world. Large estates, as well in Palestine as throughout Europe, enriched the two former institutions; but the pride, rapaciousness, and misconduct of both, especially of the Templars, seem to have balanced the advantages derived from their valor. At length the famous Saladin, usurping the throne of a feeble dynasty which had reigned in Egypt, broke in upon the Christians of Jerusalem; the king and the kingdom fell into his hands; nothing remained but a few strong towns upon the sea-coast (A.D. 1187).

These misfortunes roused once more the princes of Europe, and the *Third Crusade* (A.D. 1189) was undertaken by three of her sovereigns, the greatest in personal estimation as well as dignity—by the Emperor Frederick Barbarossa, Philip Augustus of France, and our own Richard Cœur de Lion. But this, like the preceding enterprise, failed of permanent effect; and those feats of romantic prowess which made the name of Richard so famous both in Europe and Asia proved only the total inefficacy of all exertions in an attempt so impracticable; Palestine was never the scene of another crusade. One great armament was diverted to the siege of Constantinople (A.D. 1204); and another wasted in fruitless attempts upon Egypt (A.D. 1218). The Emperor Frederick

II. afterwards procured the restoration of Jerusalem by the Saracens; but the Christian princes of Syria were unable to defend it, and their possessions were gradually reduced to the maritime towns. Acre, the last of these, was finally taken by storm in 1291; and its ruin closes the history of the Latin dominion in Syria, which Europe had already ceased to protect.

The last two crusades were undertaken by St. Louis. In the first he was attended by 2800 knights and 50,000 ordinary troops. He landed at Damietta, in Egypt, for that country was now deemed the key of the Holy Land, and easily made himself master of the city (A.D. 1248). But advancing up the country, he found natural impediments as well as enemies in his way; the Turks assailed him with Greek fire, an instrument of warfare almost as surprising and terrible as gunpowder; he lost his brother, the Count of Artois, with many knights, at Massoura, near Cairo; and began too late a retreat towards Damietta. Such calamities now fell upon this devoted army as have scarce ever been surpassed; hunger and want of every kind, aggravated by an unsparing pestilence. At length the king was made prisoner, and very few of the army escaped the Turkish scimiter in battle or captivity. Four hundred thousand livres were paid as a ransom for Louis. He returned to France, and passed near twenty years in the exercise of those virtues which are his best title to canonization. But the fatal illusions of superstition were still always at his heart; nor did it fail to be painfully observed by his subjects that he still kept the cross upon his garment. His last expedition was originally designed for Jerusalem. But he had received some intimation that the King of Tunis was desirous of embracing Christianity. That these intentions might be carried into effect, he sailed out of his way to the coast of Africa, and laid siege to that city (A.D. 1270). A fever here put an end to his life, sacrificed to that ruling passion which never would have forsaken him. But he had survived the spirit of the Crusades; the disastrous expedition to Egypt had cured his subjects, though not himself, of their folly; his son, after making terms with Tunis, returned to France; the Christians were suffered to lose what they still retained in the Holy Land; and though many princes in subsequent ages talked loudly of renewing the war, the promise, if it were ever sincere, was never accomplished.

§ 21. Louis IX. had increased the royal domain by the annexation of several counties and other less important fiefs;

but soon after the accession of Philip III., surnamed the Bold (A.D. 1270), it received a far more considerable augmentation. Alfonso, the late king's brother, had been invested with the county of Poitou, ceded by Henry III., together with part of Auvergne and of Saintonge; and held also, as has been said before, the remains of the great fief of Toulouse, in right of his wife Jane, heiress of Raymond VII. Upon his death, and that of his countess, which happened about the same time, the king entered into possession of all these territories (A.D. 1271). This acquisition brought the sovereigns of France into contact with new neighbors, the kings of Arragon and the powers of Italy. The first great and lasting foreign war which they carried on was that of Philip III. and Philip IV. against the former kingdom, excited by the insurrection of Sicily. Though effecting no change in the boundaries of their dominions, this war may be deemed a sort of epoch in the history of France and Spain, as well as in that of Italy, to which it more peculiarly belongs.

§ 22. There still remained five great and ancient fiefs of the French crown; Champagne, Guienne, Flanders, Burgundy, and Brittany. But Philip IV., usually called the Fair (A.D. 1285), married the heiress of the first, a little before his father's death; and although he governed that country in her name, without pretending to reunite it to the royal domain, it was, at least in a political sense, no longer a part of the feudal body. With some of his other vassals Philip used more violent methods. A parallel might be drawn between this prince and Philip Augustus. But while in ambition, violence of temper, and unprincipled rapacity, as well as in the success of their attempts to establish an absolute authority, they may be considered as nearly equal, we may remark this difference, that Philip the Fair, who was destitute of military talents, gained those ends by dissimulation which his predecessor had reached by force.

The duchy of Guienne, though somewhat abridged of its original extent, was still by far the most considerable of the French fiefs, even independently of its connection with England. Philip, by dint of perfidy, and by the egregious incapacity of Edmond, brother of Edward I., contrived to obtain, and to keep for several years, the possession of this great province. A quarrel among some French and English sailors having provoked retaliation, till a sort of piratical war commenced between the two countries, Edward, as Duke of Guienne, was summoned into the king's court to answer for

the trespass of his subjects (A.D. 1292). Upon this he dispatched his brother to settle terms of reconciliation, with fuller powers than should have been intrusted to so credulous a negotiator. Philip so outwitted this prince, through a fictitious treaty, as to procure from him the surrender of all the fortresses in Guienne. He then threw off the mask, and, after again summoning Edward to appear, pronounced the confiscation of his fief. This business is the greatest blemish in the political character of Edward. But his eagerness about the acquisition of Scotland rendered him less sensible to the danger of a possession in many respects more valuable; and the spirit of resistance among the English nobility, which his arbitrary measures had provoked, broke out very opportunely for Philip, to thwart every effort for the recovery of Guienne by arms. But after repeated suspensions of hostilities a treaty was finally concluded, by which Philip restored the province, on the agreement of a marriage between his daughter Isabel and the heir of England.

To this restitution he was chiefly induced by the ill success that attended his arms in Flanders, another of the great fiefs which this ambitious monarch had endeavored to confiscate. The Flemings made, however, so vigorous a resistance, that Philip was unable to reduce that small country; and in one famous battle at Courtray they discomfited a powerful army with that utter loss and ignominy to which the undisciplined impetuosity of the French nobles was preeminently exposed (A.D. 1302.)

Two other acquisitions of Philip the Fair deserve notice; that of the counties of Angoulême and La Marche, upon a sentence of forfeiture (and, as it seems, a very harsh one) passed against the reigning count: and that of the city of Lyons, and its adjacent territory, which had not even feudally been subject to the crown of France for more than three hundred years.

§ 23. One of the most memorable events in the reign of Philip IV. was the condemnation and suppression of the Order of the Knights Templars on the charge of systematic blasphemy and impiety, shameless immorality, and deliberate apostasy from the Christian faith. Their innocence or guilt has been the subject of much controversy. The general current of popular writers in the eighteenth century was in favor of their innocence; in England it would have been almost paradoxical to doubt of it. The rapacious and unprincipled character of Philip, the submission of the Pope,

Clement V., to his will, the apparent incredibility of the charges from their monstrousness, the just prejudice against confessions obtained by torture and retracted afterwards—the other prejudice, not always so just, but in the case of those not convicted on fair evidence deserving a better name, in favor of assertions of innocence made on the scaffold and at the stake—created, as they still preserve, a strong willingness to disbelieve the accusations which came so suspiciously before us. The strongest case against them is contained in an Essay written by Count Hammer Purgstall,[19] in which he endeavors to establish the identity of the idolatry ascribed to the Templars with that of the ancient Gnostic sects, and especially with those denominated Ophites, or worshippers of the serpent; and to prove also that the extreme impurity which forms one of the revolting and hardly credible charges adduced by Philip IV. is similar in all its details to the practice of the Gnostics. This attack is not conducted with all the coolness which bespeaks impartiality; but the evidence is startling enough to make refutation apparently difficult. The first part of the proof, which consists in identifying certain Gnostic idols, or, as some suppose, amulets, though it comes much to the same, with the description of what are called Baphometic, in the proceedings against the Templars, is of itself sufficient to raise a considerable presumption. We find the word *metis* continually on these images, of which Von Hammer is able to describe twenty-four. Baphomet is a secret word ascribed to the Templars.[20] But the more important evidence is that furnished by the comparison of sculptures extant on some Gnostic and Ophitic bowls with those in churches built by the Templars. Of these there are many in Germany, and some in France. Von Hammer has examined several in the Austrian dominions, and collected accounts of others. It is a striking fact that in some we find, concealed from the common observer, images and symbols extremely obscene; and as these, which can not here be more particularly adverted to, betray the depravity of the architects, and can not be explained away, we may not so much hesitate as at first to believe that impiety of a strange kind was mingled up with this

[19] "Mysterium Baphometis Revelatum, seu Fratres Militiæ Templi qua Gnostici et quidem Ophiani, Apostasiæ, Idololuliæ, et Impuritatis convicti per ipsa eorum Monumenta." Published in the sixth volume of the "Mines de l'Orient Exploitées." Vienna, 1818.

[20] This word is generally identified with Mohammed, but Hammer supposes it to be "the God who baptizes according to the spirit (Βαφὴ μήτιδος); the God of the Gnostics and of the Manichæans." See Martin, "Hist. de France," vol. iv., p. 477

turpitude. The presumptions, of course, from the absolute identity of many emblems in churches with the Gnostic superstitions in their worst form, grow stronger and stronger by multiplication of instances; and though coincidence might be credible in one, it becomes infinitely improbable in so many. One may here be mentioned, though among the slightest resemblances. The Gnostic emblems exhibit a peculiar form of cross, T; and this is common in the churches built by the Templars. But the Freemasons, or that society of architects to whom we owe so many splendid churches, do not escape M. von Hammer's ill opinion better than the Templars. Though he conceives them to be of earlier origin, they had drunk at the same foul spring of impious and impure Gnosticism. Still, this evidence has not been universally received. It was attempted to be refuted by Raynouard,[21] who had been partially successful in repelling some of his opponent's arguments, though it appears to me that he had left much untouched.[22] It seems that the architectural evidence is the most positive, and can only be resisted by disproving its existence, or its connection with the Freemasons and Templars.

§ 24. Philip the Fair left three sons, who successively reigned in France: Louis X. (A.D. 1314), surnamed Hutin; Philip V., surnamed the Long; and Charles IV., surnamed the Fair; with a daughter, Isabel, married to Edward II. of England.[23] Louis, the eldest, survived his father little more than a year, leaving one daughter and his queen pregnant. The circumstances that ensued require to be accurately stated. Louis had possessed, in right of his mother, the kingdom of Navarre, with the counties of Champagne and Brie. Upon his death, Philip, his next brother, assumed the regency both of France and Navarre; and not long afterwards entered into a treaty with Eudes, Duke of Burgundy, uncle of the princess Jane, Louis's daughter, by which her eventual rights to the succession were to be regulated. It was agreed that, in case the queen should be delivered of a daughter, these two princesses, or the survivor of them, should take the grandmother's inheritance, Navarre and Champagne, on releasing all claim to the throne of France. But this was not to take place till their age of consent, when, if they should refuse to make such renunciation, their claim

[21] "Journal des Savans" for 1819.

[22] H. Martin, who has given at great length the history of the condemnation of the Templars ("Hist. de France," vol. iv., pp. 467–497), says—"Les lumières que l'étude des documents originaux a jetées sur la question, semblent permettre aujourd'hui de condamner moralement l'ordre, mais avec de grandes réserves pour les individus."

[23] See Genealogical Table, p. 24.

was to remain, and *right to be done to them therein;* but in return, the release made by Philip of Navarre and Champagne was to be null. In the mean time, he was *to hold the government* of France, Navarre, and Champagne, receiving homage of vassals in all these countries as *governor;* saving the right of a male heir to the late king, in the event of whose birth the treaty was not to take effect.

This convention was made on the 17th of July, 1316; and on the 15th of November the queen brought into the world a son, John I. (as some called him), who died in four days. The conditional treaty was now become absolute; in spirit, at least, if any cavil might be raised about the expression: and Philip was, by his own agreement, precluded from taking any other title than that of regent or governor, until the princess Jane should attain the age to concur in or disclaim the provisional contract of her uncle. Instead of this, however, he procured himself to be consecrated at Rheims. Upon his return to Paris, an assembly composed of prelates, barons, and burgesses of that city, was convened, who acknowledged him as their lawful sovereign, and, if we may believe an historian, expressly declared that a woman was incapable of succeeding to the crown of France. The Duke of Burgundy, however, made a show of supporting his niece's interests, till, tempted by the prospect of a marriage with the daughter of Philip, he shamefully betrayed her cause, and gave up in her name, for an inconsiderable pension, not only her disputed claim to the whole monarchy, but her unquestionable right to Navarre and Champagne.

In this contest, every way memorable, but especially on account of that which sprung out of it, the exclusion of females from the throne of France was first publicly discussed. The French writers almost unanimously concur in asserting that such an exclusion was built upon a fundamental maxim of their government. No written law, nor even, as far as I know, the direct testimony of any ancient writer, has been brought forward to confirm this position. For as to the text of the Salic law, which was frequently quoted, and has indeed given a name to this exclusion of females, it can only by a doubtful and refined analogy be considered as bearing any relation to the succession of the crown.[24] It is certain,

[24] The Salic law simply provided that Salic land (*i. e.*, the allodial property of the tribe) should not descend to females, and is improperly applied to the law which excluded females from the crown. But from the accession of Philip the Long this so-called "Salic law has been regarded as an essential constitutional principle in France. The advantages of such an enactment are great and obvious. It secured the consolidation of the royal authority in the hands of a line of native princes; it tended to exclude foreign influence from the highest functions and affairs of state; and, by making it impossible that the crown of France should ever be acquired by marriage,

nevertheless, that, from the time of Clovis, no woman had ever reigned in France; and although not an instance of a sole heiress had occurred before, yet some of the Merovingian kings left daughters, who might, if not rendered incapable by their sex, have shared with their brothers in partitions then commonly made. But, on the other hand, these times were gone quite out of memory, and France had much in the analogy of her existing usages to reconcile her to a female reign. The crown resembled a great fief; and the great fiefs might universally descend to women. Even at the consecration of Philip himself, Maud, countess of Artois, held the crown over his head among the other peers. And it was scarcely beyond the recollection of persons living that Blanche had been legitimate regent of France during the minority of St. Louis.

For these reasons, and much more from the provisional treaty concluded between Philip and the Duke of Burgundy, it may be fairly inferred that the Salic law, as it was called, was not so fixed a principle at that time as has been contended. But however this may be, it received at the accession of Philip the Long a sanction which subsequent events more thoroughly confirmed. Philip himself leaving only three daughters, his brother Charles (A.D. 1322) mounted the throne; and upon his death (A.D. 1328) the rule was so unquestionably established, that his only daughter was excluded by the Count of Valois, grandson of Philip the Bold. This prince first took the regency, the queen-dowager being pregnant, and, upon her giving birth to a daughter, was crowned king. No competitor or opponent appeared in France; but one more formidable than any whom France could have produced was awaiting the occasion to prosecute his imagined right with all the resources of valor and genius, and to carry desolation over that great kingdom with as little scruple as if he were preferring a suit before a civil tribunal.

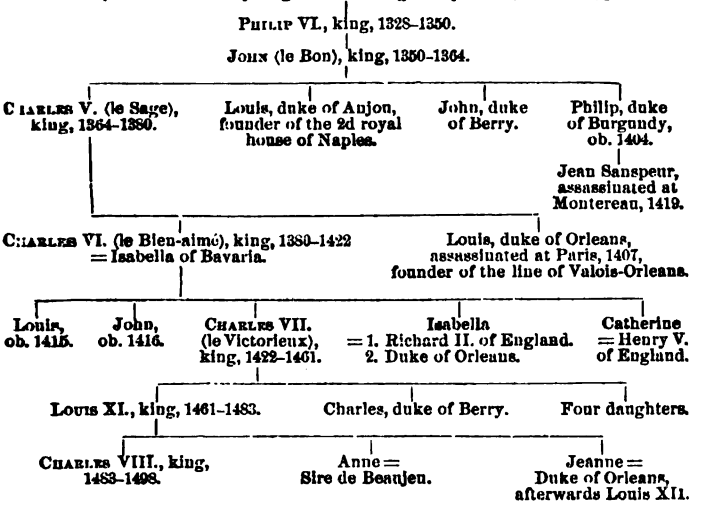
§ 25. From the moment of Charles IV.'s death, Edward III. of England buoyed himself up with the notion of his title to the crown of France, in right of his mother Isabel, sister to the last three kings. We can have no hesitation in condemning the injustice of this pretension. Whether the Salic law were or were not valid, no advantage could be gained by Edward. Even if he could forget the express or tacit decision of all France, there stood in his way Jane, the daughter of Louis X., three of Philip the Long, and one of Charles the Fair. Aware of this, Edward set up a distinction, that, al-

it cut off a dangerous temptation, which, in other countries, has produced destructive consequences." See Martin, vol. iv., p. 586; "Student's Hist. of France," p. 190.

though females were excluded from succession, the same rule did not apply to their male issue; and thus, though his mother Isabel could not herself become Queen of France, she might transmit a title to him. But this was contrary to the commonest rules of inheritance; and if it could have been regarded at all, Jane had a son, afterwards the famous King of Navarre, who stood one degree nearer to the crown than Edward.

GENEALOGICAL TABLE OF THE HOUSE OF VALOIS OF FRANCE.

Charles, count of Valois, younger son of King Philip III. (See Table, p. 25.)



It is asserted in some French authorities that Edward preferred a claim to the regency immediately after the decease of Charles the Fair, and that the States-General, or at least the peers of France, adjudged that dignity to Philip de Valois. Whether this be true or not, it is clear that he entertained projects of recovering his right as early, though his youth and the embarrassed circumstances of his government threw insuperable obstacles in the way of their execution. He did liege homage, therefore, to Philip for Guienne, and for several years, while the affairs of Scotland engrossed his attention, gave no sign of meditating a more magnificent enterprise. As he advanced in manhood, and felt the consciousness of his strength, his early designs grew mature, and produced a series of the most important and interesting revolutions in the fortunes of France. These will form the subject of the ensuing pages.

PART II.

FROM THE ACCESSION OF PHILIP OF VALOIS TO THE INVASION OF NAPLES BY CHARLES VIII.

§ 1. War of Edward III. in France. § 2. Causes of his Success. § 3. Civil disturbances of France. § 4. Peace of Bretigni. § 5. Charles V. Renewal of the War. § 6. Charles VI. His Minority and Insanity. § 7. Civil dissensions of the Parties of Orleans and Burgundy. Assassination of both these Princes. § 8. Intrigues of their Parties with England under Henry IV. Henry V. invades France. § 9. Treaty of Troyes. § 10. State of France in the first Years of Charles VII. § 11. Progress and subsequent Decline of the English Arms. § 12. Their Expulsion from France. § 13. Change in the Political Constitution. § 14. Louis XI. His Character. Leagues formed against him. § 15. Charles Duke of Burgundy. His Prosperity and Fall. § 16. Louis obtains possession of Burgundy. § 17. His death. § 18. Charles VIII. Acquisition of Brittany.

§ 1. No war had broken out in Europe, since the fall of the Roman Empire, so memorable as that of Edward III. and his successors against France, whether we consider its duration, its object, or the magnitude and variety of its events. It was a struggle of 120 years, interrupted but once by a regular pacification, where the most ancient and extensive dominion in the civilized world was the prize, twice lost and twice recovered in the conflict, while individual courage was wrought up to that high pitch which it can seldom display since the regularity of modern tactics has chastised its enthusiasm and levelled its distinctions. There can be no occasion to dwell upon the events of this war, which are familiar to almost every reader: it is rather my aim to develop and arrange those circumstances which, when rightly understood, give the clue to its various changes of fortune.

§ 2. France was, even in the fourteenth century, a kingdom of such extent and compactness of figure, such population and resources, and filled with so spirited a nobility, that the very idea of subjugating it by a foreign force must have seemed the most extravagant dream of ambition. Yet, in the course of about twenty years of war, this mighty nation was reduced to the lowest state of exhaustion, and dismembered of considerable provinces by an ignominious peace. What was the combination of political causes which brought about so strange a revolution, and, though not realizing Edward's hopes to their extent, redeemed them from the imputation of rashness in the judgment of his own and succeeding ages?

The first advantage which Edward III. possessed in this

contest was derived from the splendor of his personal character and from the still more eminent virtues of his son. Besides prudence and military skill, these great princes were endowed with qualities peculiarly fitted for the times in which they lived. Chivalry was then in its zenith; and in all the virtues which adorned the knightly character in courtesy, munificence, gallantry, in all delicate and magnanimous feelings, none were so conspicuous as Edward III. and the Black Prince. As later princes have boasted of being the best gentlemen, they might claim to be the prowest knights in Europe—a character not quite dissimilar, yet of more high pretension. Their court was, as it were, the sun of that system which embraced the valor and nobility of the Christian world; and the respect which was felt for their excellences, while it drew many to their side, mitigated in all the rancor and ferociousness of hostility. This war was like a great tournament, where the combatants fought indeed *à outrance*, but with all the courtesy and fair play of such an entertainment, and almost as much for the honor of their ladies. In the school of the Edwards were formed men not inferior in any nobleness of disposition to their masters—Manni and the Captal de Buch, Knollys and Calverley, Chandos and Lancaster. On the French side, especially after Du Guesclin came on the stage, these had rivals almost equally deserving of renown. If we could forget, what never should be forgotten, the wretchedness and devastation that fell upon a great kingdom, too dear a price for the display of any heroism, we might count these English wars in France among the brightest periods in history.

Philip of Valois, and John his son, showed but poorly in comparison with their illustrious enemies. Yet they both had considerable virtues; they were brave, just, liberal; and the latter, in particular, of unshaken fidelity to his word. But neither was beloved by his subjects; the misgovernment and extortion of their predecessors during half a century had alienated the public mind, and rendered their own taxes and debasement of the coin intolerable. Philip was made by misfortune, John by nature, suspicious and austere; and although their most violent acts seem never to have wanted absolute justice, yet they were so ill conducted, and of so arbitrary a complexion, that they greatly impaired the reputation, as well as interests, of these monarchs.

Next to the personal qualities of the King of England, his resources in this war must be taken into the account. It was after long hesitation that he assumed the title and arms

of France, from which, unless upon the best terms, he could not recede without loss of honor. In the mean time he strengthened himself by alliances with the emperor, with the cities of Flanders, and with most of the princes in the Netherlands and on the Rhine. Yet I do not know that he profited much by these conventions, since he met with no success till the scene of the war was changed from the Flemish frontier to Normandy and Poitou. The troops of Hainault alone were constantly distinguished in his service.

But his intrinsic strength was at home. England had been growing in riches since the wise government of his grandfather, Edward I., and through the market opened for her wool with the manufacturing towns of Flanders. She was tranquil within; and her northern enemy, the Scotch, had been defeated and quelled. The Parliament, after some slight precautions against a very probable effect of Edward's conquest of France, the reduction of their own island into a province, entered, as warmly as improvidently, into his quarrel. The people made it their own, and grew so intoxicated with the victories of this war, that for some centuries the injustice and folly of the enterprise do not seem to have struck the gravest of our countrymen.

There is, indeed, ample room for national exultation at the names of Crecy, Poitiers, and Azincourt. So great was the disparity of numbers upon those famous days, that we can not, with the French historians, attribute the discomfiture of their hosts merely to mistaken tactics and too impetuous valor. They yielded rather to that intrepid steadiness in danger which had already become the characteristic of our English soldiers, and which, during five centuries, has insured their superiority, whenever ignorance or infatuation has not led them into the field. But these victories, and the qualities that secured them, must chiefly be ascribed to the freedom of our constitution, and to the superior condition of the people. Not the nobility of England, not the feudal tenants, won the battles of Crecy and Poitiers; for these were fully matched in the ranks of France; but the yeomen, who drew the bow with strong and steady arms, accustomed to use it in their native fields, and rendered fearless by personal competence and civil freedom. It is well known that each of the three great victories was due to our archers, who were chiefly of the middle class, and attached, according to the system of that age, to the knights and squires who fought in heavy armor with the lance. Even at the battle of Poitiers, of which our country seems to have the least right to boast,

since the greater part of the Black Prince's small army was composed of Gascons, the merit of the English bowmen is strongly attested by Froissart.

§ 3. Yet the glorious termination to which Edward was enabled, at least for a time, to bring the contest, was rather the work of fortune than of valor and prudence. Until the battle of Poitiers he had made no progress towards the conquest of France. That country was too vast, and his army too small, for such a revolution. The victory of Crecy gave him nothing but Calais, a post of considerable importance in war and peace, but rather adapted to annoy than to subjugate the kingdom. But at Poitiers he obtained the greatest of prizes, by taking prisoner the king of France. Not only the love of freedom tempted that prince to ransom himself by the utmost sacrifices, but his captivity left France defenseless, and seemed to annihilate the monarchy itself. The government was already odious; a spirit was awakened in the people which might seem hardly to belong to the fourteenth century; and the convulsions of our own time are sometimes strongly paralleled by those which succeeded the battle of Poitiers. Already the States-General had established a fundamental principle that no resolution could be passed as the opinion of the whole unless each of the three orders concurred in its adoption. The right of levying and of regulating the collection of taxes was recognized. But that assembly, which met at Paris immediately after the battle, went far greater lengths in the reform and control of government. From the time of Philip the Fair the abuses natural to arbitrary power had harassed the people. There now seemed an opportunity of redress; and however seditious, or even treasonable, may have been the motives of those who guided this assembly of the States, especially the famous Marcel, it is clear that many of their reformations tended to liberty and the public good.[1] But the tumultuous scenes which passed in the capital, sometimes heightened into civil war, necessarily distracted men from the common defense against Edward. These tumults were excited, and the distraction increased, by Charles King of Navarre, surnamed the Bad. He was grandson of Louis Hutin, by his daughter Jane, and, if Edward's pretense of claiming through females could be admitted, was a nearer heir to the crown; the consciousness of which seems to have suggested

[1] The reader is referred to the next chapter for more information on this subject. This separation is inconvenient, but it arose indispensably out of my arrangement, and prevented greater inconvenience.

itself to his depraved mind as an excuse for his treacheries, though he could entertain very little prospect of asserting the claim against either contending party. He entered into alliances with Edward, and fomented the seditious spirit of Paris. Eloquent and insinuating, he was the favorite of the people, whose grievances he affected to pity, and with whose leaders he intrigued.

There is no affliction which did not fall upon France during this miserable period. A foreign enemy was in the heart of the kingdom, the king a prisoner, the capital in sedition, a treacherous prince of the blood in arms against the sovereign authority. Famine, the sure and terrible companion of war, for several years desolated the country. In 1348 a pestilence, the most extensive and unsparing of which we have any memorial, visited France as well as the rest of Europe, and consummated the work of hunger and the sword.[2] The companies of adventure, mercenary troops in the service of John or Edward, finding no immediate occupation after the truce of 1357, scattered themselves over the country in search of pillage. No force existed sufficiently powerful to check these robbers in their career. Undismayed by superstition, they compelled the pope to redeem himself in Avignon by the payment of forty thousand crowns. France was the passive victim of their license, even after the pacification concluded with England, till some were diverted into Italy, and others led by Du Guesclin to the war of Castile. Impatient of this wretchedness, and stung by the insolence and luxury of their lords, the peasantry of several districts broke out into a dreadful insurrection (A.D. 1358). This was called the Jacquerie, from the cant phrase Jacques Bonhomme, applied to men of that class; and was marked by all the circumstances of horror incident to the rising of an exasperated and unenlightened populace.

§ 4. Subdued by these misfortunes, though Edward had made but slight progress towards the conquest of the coun-

[2] A full account of the ravages made by this memorable plague may be found in Matteo Villani, the second of that family who wrote the history of Florence. His brother and predecessor, John Villani, was himself a victim to it. The disease began in the Levant about 1346; from whence Italian traders brought it to Sicily, Pisa, and Genoa. In 1348 it passed the Alps, spread over France and Spain; in the next year it reached Britain, and in 1350 laid waste Germany and other northern states; lasting generally about five months in each country. At Florence more than three out of five died. The stories of Boccaccio's Decamerone, as is well known, are supposed to be related by a society of Florentine ladies and gentlemen retired to the country during this pestilence.

Another pestilence, only less destructive than the former, wasted both France and England in 1361. The plague caused a truce of several months. The war was in fact carried on with less vigor for some years.

try, the regent of France, afterwards Charles V., submitted to the peace of Bretigni (A.D. 1360). By this treaty, not to mention less important articles, all Guienne, Gascony, Poitou, Saintonge, the Limousin, and the Angoumois, as well as Calais, and the country of Ponthieu, were ceded in full sovereignty to Edward; a price abundantly compensating his renunciation of the title of France, which was the sole concession stipulated in return. At Calais this treaty was renewed by John, who, as a prisoner, had been no party to the former compact, and who now returned to his dominions.

When the peace of Bretigni was to be carried into effect the nobility of the south remonstrated against the loss of the king's sovereignty, and showed, it is said, in their charters granted by Charlemagne, a promise never to transfer the right of protecting them to another. The citizens of Rochelle implored the king not to desert them, and protested their readiness to pay half their estates in taxes, rather than fall under the power of England. John with heaviness of heart persuaded these faithful people to comply with that destiny which he had not been able to surmount. At length they sullenly submitted: we will obey, they said, the English with our lips, but our hearts shall never forget their allegiance. Such unwilling subjects might perhaps have been won by a prudent government; but the temper of the Prince of Wales, which was rather stern and arbitrary, did not conciliate their hearts to his cause. After the expedition into Castile, a most injudicious and fatal enterprise, he attempted to impose a heavy tax upon Guienne. This was extended to the lands of the nobility, who claimed an immunity from all impositions. Many of the chief lords in Guienne and Gascony carried their complaints to the throne of Charles V., who had succeeded his father in 1364, appealing to him as the prince's sovereign and judge. After a year's delay the king ventured to summon the Black Prince to answer these charges before the peers of France, and the war immediately recommenced between the two countries (A.D. 1368).

§ 5. Though it is impossible to reconcile the conduct of Charles upon this occasion to the stern principles of rectitude which ought always to be obeyed, yet the exceeding injustice of Edward in the former war, and the miseries which he inflicted upon an unoffending people in the prosecution of his claim, will go far towards extenuating this breach of the treaty of Bretigni. The measures of Charles had been so sagaciously taken, that, except through that perverseness of fortune, against which, especially in war, there is no security,

he could hardly fail of success. The elder Edward was declining through age, and the younger through disease; the ceded provinces were eager to return to their native king, and their garrisons, as we may infer by their easy reduction, feeble and ill-supplied. France, on the other hand, had recovered breath after her losses; the sons of those who had fallen or fled at Poitiers were in the field; a king, not personally warlike, but eminently wise and popular, occupied the throne of the rash and intemperate John. She was restored by the policy of Charles V. and the valor of Du Guesclin. This hero, a Breton gentleman without fortune or exterior graces, was the greatest ornament of France during that age. Though inferior, as it seems, to Lord Chandos in military skill, as well as in the polished virtues of chivalry, his unwearied activity, his talent of inspiring confidence, his good fortune, the generosity and frankness of his character, have preserved a fresh recollection of his name, which has hardly been the case with our countryman.

In a few campaigns the English were deprived of almost all their conquests, and even, in a great degree, of their original possessions in Guienne. They were still formidable enemies, not only from their courage and alacrity in the war, but on account of the keys of France which they held in their hands—Bordeaux, Bayonne, and Calais, by inheritance or conquest; Brest and Cherbourg, in mortgage from their allies, the Duke of Brittany and King of Navarre. But the successor of Edward III. was Richard II.; a reign of feebleness and sedition gave no opportunity for prosecuting schemes of ambition. The war, protracted with few distinguished events for several years, was at length suspended by repeated armistices, not, indeed, very strictly observed, and which the animosity of the English would not permit to settle in any regular treaty. Nothing less than the terms obtained at Bretigni, emphatically called the Great Peace, would satisfy a frank and courageous people, who deemed themselves cheated by the manner of its infraction. The war was therefore always popular in England, and the credit which an ambitious prince, Thomas duke of Gloucester, obtained in that country, was chiefly owing to the determined opposition which he showed to all French connections. But the politics of Richard II. were of a different cast; and Henry IV. was equally anxious to avoid hostilities with France; so that, before the unhappy condition of that kingdom tempted his son to revive the claims of Edward in still more favorable circumstances, there had been thirty years of respite,

and even some intervals of friendly intercourse between the two nations.

§ 6. Charles V., surnamed the Wise, after a reign which, if we overlook a little obliquity in the rupture of the peace of Bretigni, may be deemed one of the most honorable in French history, dying prematurely, left the crown to his son, Charles VI. (A.D. 1380), a boy of thirteen, under the care of three ambitious uncles, the dukes of Anjou, Berry, and Burgundy. Charles V. had retrieved the glory, restored the tranquillity, revived the spirit, of his country; the severe trials which exercised his regency after the battle of Poitiers had disciplined his mind; he became a sagacious statesman, an encourager of literature, a beneficent lawgiver. But all the fruits of his wisdom were lost in the succeeding reign. During the forty years that Charles VI. bore the name of king, rather than reigned, in France, that country was reduced to a state far more deplorable than during the captivity of John.

A great change had occurred in the political condition of France during the fourteenth century. As the feudal militia became unserviceable, the expenses of war were increased through the necessity of taking troops into constant pay. Hence taxes, hitherto almost unknown, were levied incessantly, and with all those circumstances of oppression which are natural to the fiscal proceedings of an arbitrary government. The ill faith with which the new government imposed subsidies, after promising their abolition, provoked the people of Paris, and sometimes of other places, to repeated seditions. The States-General not only compelled the government to revoke these impositions and restore the nation, at least according to the language of edicts, to all their liberties, but, with less wisdom, refused to make any grant of money. Indeed a remarkable spirit of democratical freedom was then rising in those classes on whom the crown and nobility had so long trampled. An example was held out by the Flemings, who, always tenacious of their privileges, because conscious of their ability to maintain them, were engaged in a furious conflict with Louis, count of Flanders. The court of France took part in this war; and after obtaining a decisive victory over the citizens of Ghent, Charles V. returned to chastise those of Paris. Unable to resist the royal army, the city was treated as the spoil of conquest; its immunities abridged; its most active leaders put to death; a fine of uncommon severity imposed; and the taxes renewed by arbitrary prerogative. But the peo-

ple preserved their indignation for a favorable moment; and were unfortunately led by it, when rendered subservient to the ambition of others, into a series of crimes, and a long alienation from the interests of their country.

Though Charles VI. was considered from the time of his coronation as reigning with full personal authority, the actual exercise of government was divided between Anjou, Berry, and Burgundy, together with the king's maternal uncle, the Duke of Bourbon. The first of these soon undertook an expedition into Italy, to possess himself of the crown of Naples, in which he perished. Berry was a profuse and voluptuous man, of no great talents; though his rank, and the middle position which he held between struggling parties, made him rather conspicuous throughout the revolutions of that age. The most respectable of the king's uncles, the Duke of Bourbon, being farther removed from the royal stem, and of an unassuming character, took a less active part than his three coadjutors. Burgundy, an ambitious and able prince, maintained the ascendancy, until Charles, weary of a restraint which had been protracted by his uncle till he was in his twenty-first year, took the reins into his own hands (A.D. 1387). The dukes of Burgundy and Berry retired from court, and the administration was committed to a different set of men, at the head of whom appeared the constable de Clisson, a soldier of great fame in the English wars. The people rejoiced in the fall of the princes by whose exactions they had been plundered; but the new ministers soon rendered themselves odious by similar conduct.

Charles VI. had reigned five years from his assumption of power, when he was seized with a derangement of intellect (A.D. 1393), which continued, through a series of recoveries and relapses, to his death. He passed thirty years in a pitiable state of suffering, neglected by his family, particularly by the most infamous of women, Isabel of Bavaria, his queen, to a degree which is hardly credible.[3] The ministers were immediately disgraced; the princes reassumed their stations.

§ 7. For several years the Duke of Burgundy conducted

[3] Sismondi inclines to speak more favorably of this queen than most have done. He discredits the suspicion of a criminal intercourse with the duke of Orleans, and represents her as merely an indolent woman fond of good cheer. Yet he owns that the king was so neglected as to suffer from an excessive want of cleanliness, sometimes even from hunger (xii., 218, 225). Was this no imputation on his wife? Martin says that contemporary writers do not mention expressly the criminal intercourse between Isabel and the duke of Orleans, but he adds, "ce qu'on sait des mœurs du duc et de sa belle-sœur permet difficilement de croire en l'innocence de leur intimité," (v., 471).

the government. But this was in opposition to a formidable rival, Louis, duke of Orleans, the king's brother. It was impossible that a prince so near to the throne, favored by the queen perhaps with criminal fondness, and by the people on account of his external graces, should not acquire a share of power. He succeeded at length in obtaining the whole management of affairs; wherein the outrageous dissoluteness of his conduct, and still more the excessive taxes imposed, render him altogether odious. The Parisians compared his administration with that of the Duke of Burgundy; and from that time ranged themselves on the side of the latter and his family, throughout the long distractions to which the ambition of these princes gave birth.

The death of the Duke of Burgundy, in 1404, after several fluctuations of success between him and the Duke of Orleans, by no means left his party without a head. Equally brave and ambitious, but far more audacious and unprincipled, his son John, surnamed Sanspeur, sustained the same contest. A reconciliation had been, however, brought about with the Duke of Orleans; they had sworn reciprocal friendship, and participated, as was the custom, in order to render these obligations more solemn, in the same communion. In the midst of this outward harmony, the Duke of Orleans was assassinated in the streets of Paris (A.D. 1407). After a slight attempt at concealment, Burgundy avowed and boasted of the crime. From this fatal moment the dissensions of the royal family began to assume the complexion of civil war. The queen, the sons of the Duke of Orleans, with the dukes of Berry and Bourbon, united against the assassin. But he possessed, in addition to his own appanage of Burgundy, the county of Flanders as his maternal inheritance; and the people of Paris, who hated the Duke of Orleans, readily forgave, or rather exulted in, his murder. He soon obtained the management of affairs, and drove his adversaries from the capital. The princes, headed by the father-in-law of the young Duke of Orleans, the Count of Armagnac, from whom their party was now denominated, raised their standard against him; and the north of France was rent to pieces by a protracted civil war, in which neither party scrupled any extremity of pillage or massacre. The dauphin, aware of the tyranny which the two parties alternately exercised, was forced, even at the expense of perpetuating a civil war, to balance one against the other, and permit neither to be wholly subdued. In 1417 the Count of Armagnac, now constable of France, was in possession of the gov-

ernment. But his severity, and the weight of taxes, revived the Burgundian party in Paris, which a rigid proscription had endeavored to destroy. He brought on his head the implacable hatred of the queen, whom he had not only shut out from public affairs, but disgraced by the detection of her gallantries. Notwithstanding her ancient enmity to the Duke of Burgundy, she made overtures to him, and, being delivered by his troops from confinement, declared herself openly on his side. A few obscure persons stole the city keys, and admitted the Burgundians into Paris. The tumult which arose showed in a moment the disposition of the inhabitants; but this was more horribly displayed a few days afterwards, when the populace, rushing to the prisons, massacred the constable D'Armagnac and his partisans (A.D. 1418). Between three and four thousand persons were murdered on this day, which has no parallel but what the last age witnessed, in the massacre perpetrated by the same ferocious populace of Paris under circumstances nearly similar. Not long afterwards an agreement took place between the Duke of Burgundy, who had now the king's person as well as the capital in his hands, and the dauphin, whose party was enfeebled by the loss of almost all its leaders. This reconciliation, which mutual interest should have rendered permanent, had lasted a very short time, when the Duke of Burgundy was assassinated at Montereau, at an interview with Charles, in his presence, and by the hands of his friends, though not, perhaps, with his previous knowledge (A.D. 1419). From whomsoever the crime proceeded, it was a deed of infatuation, and plunged France afresh into a sea of perils, from which the union of these factions had just afforded a hope of extricating her.

§ 8. It has been mentioned already that the English war had almost ceased during the reigns of Richard II. and Henry IV. A long commercial connection had subsisted between England and Flanders, which the dukes of Burgundy, when they became sovereigns of the latter country upon the death of Count Louis, in 1384, were studious to preserve by separate truces. They acted upon the same pacific policy when their interest predominated in the councils of France. Henry had even a negotiation pending for the marriage of his eldest son with a princess of Burgundy, when an unexpected proposal from the opposite side set more tempting views before his eyes. The Armagnacs, pressed hard by the Duke of Burgundy, offered, in consideration of only 4000 troops, the pay of which they would

themselves defray, to assist him in the recovery of Guienne and Poitou. Four princes of the blood—Berry, Bourbon, Orleans, and Alençon—disgraced their names by signing this treaty (May, 1412). Henry broke off his alliance with Burgundy, and sent a force into France, which found, on its arrival, that the princes had made a separate treaty, without the least concern for their English allies. After his death, Henry V. engaged for some time in a series of negotiations with the French court, where the Orleans party now prevailed, and with the Duke of Burgundy. He even secretly treated at the same time for a marriage with Catherine of France (which seems to have been his favorite, as it was ultimately his successful, project), and with a daughter of the duke—a duplicity not creditable to his memory. But Henry's ambition, which aimed at the highest quarry, was not long fettered by negotiation; and, indeed, his proposals of marrying Catherine were coupled with such exorbitant demands as France, notwithstanding all her weakness, could not admit, though she would have ceded Guienne, and given a vast dowry with the princess. He invaded Normandy, took Harfleur, and won the great battle of Azincourt, on his march to Calais (A.D. 1415).

The flower of French chivalry was mowed down in this fatal day; but especially the chiefs of the Orleans party, and the princes of the royal blood, met with death or captivity. Burgundy had still suffered nothing; but a clandestine negotiation had secured the duke's neutrality, though he seems not to have entered into a regular alliance till a year after the battle of Azincourt, when, by a secret treaty at Calais, he acknowledged the right of Henry to the crown of France, and his own obligation to do him homage, though its performance was to be suspended till Henry should become master of a considerable part of the kingdom. In a second invasion the English achieved the conquest of Normandy; and this, in all subsequent negotiations for peace during the life of Henry, he would never consent to relinquish. After several conferences, which his demands rendered abortive, the French court at length consented to add Normandy to the cessions made in the peace at Bretigni; and the treaty, though laboring under some difficulties, seems to have been nearly completed, when the Duke of Burgundy, for reasons unexplained, suddenly came to a reconciliation with the dauphin (July 11, 1419). This event, which must have been intended adversely to Henry, would probably have broken off all parley on the subject of peace, if it had not been

speedily followed by one still more surprising—the assassination of the Duke of Burgundy at Montereau already mentioned (Sept. 10, 1419).

§ 9. An act of treachery so apparently unprovoked inflamed the minds of that powerful party which had looked up to the duke as their leader and patron. The city of Paris, especially, abjured at once its respect for the supposed author of the murder, though the legitimate heir of the crown. A solemn oath was taken by all ranks to revenge the crime; the nobility, the clergy, the Parliament, vying with the populace in their invectives against Charles, whom they now styled only pretended (soi-disant) dauphin. Philip, son of the assassinated duke, who, with all the popularity and much of the ability of his father, did not inherit all his depravity, was instigated by a pardonable excess of filial resentment to ally himself with the King of England. These passions of the people, and the Duke of Burgundy, concurring with the imbecility of Charles VI. and the rancor of Isabel towards her son, led to the treaty of Troyes (May, 1420). This compact, signed by the queen and duke, as proxies of the king, who had fallen into a state of unconscious idiotcy, stipulated that Henry V., upon his marriage with Catherine, should become immediately regent of France, and, after the death of Charles, succeed to the kingdom, in exclusion not only of the dauphin, but of all the royal family. It is unnecessary to remark that these flagitious provisions were absolutely invalid. But they had at the time the strong sanction of force; and Henry might plausibly flatter himself with a hope of establishing his own usurpation as firmly in France as his father's had been in England. What not even the comprehensive policy of Edward III., the energy of the Black Prince, the valor of their Knollyses and Chandoses, nor his own victories, could attain, now seemed, by a strange vicissitude of fortune, to court his ambition. During two years that Henry lived after the treaty of Troyes, he governed the north of France with unlimited authority in the name of Charles VI. The latter survived his son-in-law but a few weeks; and the infant Henry VI. was immediately proclaimed King of France and England, under the regency of his uncle, the Duke of Bedford.

§ 10. Notwithstanding the disadvantage of a minority, the English cause was less weakened by the death of Henry than might have been expected. The Duke of Bedford partook of the same character, and resembled his brother in faults as well as virtues; in his haughtiness and arbitrary

temper as in his energy and address. At the accession of Charles VII. (A.D. 1422) the usurper was acknowledged by all the northern provinces of France, except a few fortresses, by most of Guienne, and the dominions of Burgundy. The Duke of Brittany soon afterwards acceded to the treaty of Troyes, but changed his party again several times within a few years. The central provinces, with Languedoc, Poitou, and Dauphiné, were faithful to the king. For some years the war continued without any decisive result; but the balance was clearly swayed in favor of England. For this it is not difficult to assign several causes. The animosity of the Parisians and the Duke of Burgundy against the Armagnac party still continued, mingled in the former with dread of the king's return, whom they judged themselves to have inexpiably offended. The war had brought forward some accomplished commanders in the English army; surpassing not, indeed, in valor and enterprise, but in military skill, any whom France could oppose to them. Of these the most distinguished, besides the Duke of Bedford himself, were Warwick, Salisbury, and Talbot. Their troops, too, were still very superior to the French. But this, we must in candor allow, proceeded in a great degree from the mode in which they were raised. The war was so popular in England, that it was easy to pick the best and stoutest recruits, and their high pay allured men of respectable condition to the service. We find in Rymer a contract of the Earl of Salisbury to supply a body of troops, receiving a shilling a day for every man-at-arms, and sixpence for each archer.[4] This is, perhaps, equal to fifteen times the sum at our present value of money. They were bound, indeed, to furnish their own equipments and horses. But France was totally exhausted by her civil and foreign war, and incompetent to defray the expenses even of the small force which defended the wreck of the monarchy. Charles VII. lived in the utmost poverty at Bourges. The nobility had scarcely recovered from the fatal slaughter of Azincourt; and the infantry, composed of peasants or burgesses, which had made their army so numerous upon that day, whether from inability to compel their services, or experience of their inefficacy, were never called into the field.

It was, however, in the temper of Charles VII. that his

[4] Rym. t. x., p. 392. This contract was for 600 men-at-arms, including six bannerets and thirty-four bachelors; and for 1700 archers: bien et suffisamment montez, armez, et arraiez comme a leurs estats appartient. The pay was, for the earl, 6s. 8d. a day; for a banneret, 4s.; for a bachelor, 2s.; for every other man-at-arms, 1s.; and for each archer, 6d. Artillerymen were paid higher than men-at-arms.

enemies found their chief advantage. This prince is one of the few whose character has been improved by prosperity. During the calamitous morning of his reign he shrunk from fronting the storm, and strove to forget himself in pleasure. Though brave, he was never seen in war; though intelligent, he was governed by flatterers. Those who had committed the assassination at Montereau under his eyes were his first favorites; as if he had determined to avoid the only measure through which he could hope for better success—a reconciliation with the Duke of Burgundy.

§ 11. It can not, therefore, surprise us that, with all these advantages, the regent Duke of Bedford had almost completed the capture of the fortresses north of the Loire when he invested Orleans in 1428. If this city had fallen, the central provinces, which were less furnished with defensible places, would have lain open to the enemy; and it is said that Charles VII. in despair was about to retire into Dauphiné. At this time his affairs were restored by one of the most marvellous revolutions in history. A country girl overthrew the power of England. We can not pretend to explain the surprising story of the Maid of Orleans; for, however easy it may be to suppose that a heated and enthusiastic imagination produced her own visions, it is a much greater problem to account for the credit they obtained, and for the success that attended her. Nor will this be solved by the hypothesis of a concerted stratagem; which, if we do not judge altogether from events, must appear liable to so many chances of failure that it could not have suggested itself to any rational person. However, it is certain that the appearance of Joan of Arc[a] turned the tide of war, which from that moment flowed without interruption in Charles's favor. A superstitious awe enfeebled the sinews of the English. They hung back in their own country, or deserted from the army, through fear of the incantations by which alone they conceived so extraordinary a person to succeed. As men always make sure of Providence for an ally, whatever untoward fortune appeared to result from preternatural causes was at once ascribed to infernal enemies; and such bigotry may be pleaded as an excuse, though a very miserable one, for the detestable murder of this heroine.

[a] I have followed the common practice of translating Jeanne d'Arc by Joan of Arc. It does not appear, however, that any such place as Arc exists in that neighborhood, though there is a town of that name at a considerable distance. Joan was, as is known, a native of the village of Domremy, in Lorraine. The correct orthography of her name is Darc, as is shown by Michelet and H. Martin.

The spirit which Joan of Arc had roused did not subside. France recovered confidence in her own strength, which had been chilled by a long course of adverse fortune. The king, too, shook off his indolence,* and permitted Richemont, brother of the Duke of Brittany, to exclude his unworthy favorites from the court. This led to a very important consequence. The Duke of Burgundy, whose alliance with England had been only the fruit of indignation at his father's murder, fell naturally, as that passion wore out, into sentiments more congenial to his birth and interests. A prince of the house of Capet could not willingly see the inheritance of his ancestors transferred to a stranger. Yet the union of his sister with Bedford, the obligations by which he was bound, and, most of all, the favor shown by Charles VII. to the assassins of his father, kept him for many years on the English side, although rendering it less and less assistance. But at length he concluded a treaty at Arras (A.D. 1435), the terms of which he dictated rather as a conqueror than a subject negotiating with his sovereign. Charles, however, refused nothing for such an end; and, in a very short time, the Burgundians were ranged with the French against their old allies of England.

§ 12. It was now time for the latter to abandon those magnificent projects of conquering France which temporary circumstances alone had seemed to render feasible. As foreign enemies, they were odious even in that part of France which had acknowledged Henry; and when the Duke of Burgundy deserted their side, Paris and every other city were impatient to throw off the yoke. A feeble monarchy, and a selfish council, completed their ruin: the necessary subsidies were raised with difficulty, and, when raised, misapplied. It

* It is a current piece of history that Agnes Sorel, mistress of Charles VII., had the merit of disuading him from giving up the kingdom as lost at the time when Orleans was besieged in 1428. Mezeray, Daniel, Villaret, and, I believe, every other modern historian, have mentioned this circumstance; and some of them, among whom is Hume, with the addition that Agnes threatened to leave the court of Charles for that of Henry, affirming that she was born to be the mistress of a great king. The latter part of this tale is evidently a fabrication, Henry VI. being at the time a child of seven years old. But the story is not mentioned by contemporary writers, and Martin has shown (vi., 821) that Charles did not become acquainted with Agnes Sorel before 1433; consequently five years after the siege of Orleans. The tradition, however, is as ancient as Francis I., who made in her honor a quatrain which is well known. This probably may have brought the story more into vogue, and led Mezeray, who was not very critical, to insert it in his history, from which it has passed to his followers. Its origin was apparently the popular character of Agnes. She was the Nell Gwyn of France, and justly beloved, not only for her charity and courtesy, but for bringing forward men of merit and turning her influence, a virtue very rare in her class, towards the public interest. From thence it was natural to bestow upon her, in after times, a merit not ill suited to her character, but which an accurate observation of dates renders impossible.

is a proof of the exhaustion of France, that Charles was unable, for several years, to reduce Normandy or Guienne, which were so ill-provided for defense. At last he came with collected strength to the contest, and, breaking an armistice upon slight pretenses, within two years overwhelmed the English garrisons in each of these provinces (A.D. 1449). All the inheritance of Henry II. and Eleanor, all the conquests of Edward III. and Henry V. except Calais and a small adjacent district, were irrecoverably torn from the crown of England. A barren title, that idle trophy of disappointed ambition, was preserved with strange obstinacy to our own age.

§ 13. At the expulsion of the English, France emerged from the chaos with an altered character and new features of government. The royal authority and supreme jurisdiction of the Parliament were universally recognized. Yet there was a tendency towards insubordination left among the great nobility, arising in part from the remains of old feudal privileges, but still more from that lax administration which, in the convulsive struggles of the war, had been suffered to prevail. In the south were some considerable vassals, the houses of Foix, Albret, and Armagnac, who, on account of their distance from the seat of empire, had always maintained a very independent conduct. The dukes of Brittany and Burgundy were of a more formidable character, and might rather be ranked among foreign powers than privileged subjects. The princes, too, of the royal blood, who, during the late reign, had learned to partake or contend for the management, were ill-inclined towards Charles VII., himself jealous, from old recollections, of their ascendancy. They saw that the constitution was verging rapidly towards an absolute monarchy, from the direction of which they would studiously be excluded. This apprehension gave rise to several attempts at rebellion during the reign of Charles VII. Among the pretenses alleged by the revolters in each of these, the injuries of the people were not forgotten; but from the people they received small support. Weary of civil dissension, and anxious for a strong government to secure them from depredations, the French had no inducement to intrust even their real grievances to a few malcontent princes, whose regard for the common good they had much reason to distrust. Every circumstance favored Charles VII. and his son in the attainment of arbitrary power. The country was pillaged by military ruffians. Charles established his companies of ordonnance, the basis of the

French regular army, in order to protect the country from such depredators. They consisted of about 9000 soldiers, all cavalry, of whom 1500 were heavy-armed; a force not very considerable, but the first, except mere body-guards, which had been raised in any part of Europe as a national standing army. These troops were paid out of the produce of a permanent tax, called the taille; an innovation still more important than the former. But the present benefit cheating the people, now prone to submissive habits, little or no opposition was made, except in Guienne, the inhabitants of which had speedy reason to regret the mild government of England, and vainly endeavored to return to its protection.

§ 14. It was not long before the new despotism exhibited itself in its harshest character. Louis XI., son of Charles VII., who, during his father's reign, had been connected with the discontented princes, came to the throne (A.D. 1461) greatly endowed with those virtues and vices which conspire to the success of a king. Laborious vigilance in business, contempt of pomp, affability to inferiors, were his excellences; qualities especially praiseworthy in an age characterized by idleness, love of pageantry, and insolence. To these virtues he added a perfect knowledge of all persons eminent for talents or influence in the countries with which he was connected, and a well-judged bounty, that thought no expense wasted to draw them into his service or interest. In the fifteenth century this political art had hardly been known, except perhaps in Italy; the princes of Europe had contended with each other by arms, sometimes by treachery, but never with such complicated subtlety of intrigue. Of that insidious cunning, which has since been brought to perfection, Louis XI. may be deemed not absolutely the inventor, but the most eminent improver; and its success has led, perhaps, to too high an estimate of his abilities. Like most bad men, he sometimes fell into his own snare, and was betrayed by his confidential ministers, because his confidence was generally reposed in the wicked. And his dissimulation was so notorious, his tyranny so oppressive, that he was naturally surrounded by enemies, and had occasion for all his craft to elude those rebellions and confederacies which might perhaps not have been raised against a more upright sovereign. At one time the monarchy was on the point of sinking before a combination which would have ended in dismembering France. This was the league denominated of the Public Weal (A.D. 1461), in which all the princes and

great vassals of the French crown were concerned; the dukes of Brittany, Burgundy, Alençon, Bourbon, the Count of Dunois, so renowned for his valor in the English wars, the families of Foix and Armagnac; and at the head of all, Charles, duke of Berry, the king's brother and presumptive heir. So unanimous a combination was not formed without a strong provocation from the king, or at least without weighty grounds for distrusting his intentions; but the more remote cause of this confederacy, as of those which had been raised against Charles VII, was the critical position of the feudal aristocracy from the increasing power of the crown. This war of the Public Weal was, in fact, a struggle to preserve their independence; and from the weak character of the Duke of Berry, whom they would, if successful, have placed upon the throne, it is possible that France might have been in a manner partitioned among them in the event of their success, or, at least, that Burgundy and Brittany would have thrown off the sovereignty that galled them.

The strength of the confederates in this war much exceeded that of the king; but it was not judiciously employed; and after an indecisive battle at Montlhéry they failed in the great object of reducing Paris, which would have obliged Louis to fly from his dominions. It was his policy to promise every thing, in trust that fortune would afford some opening to repair his losses and give scope to his superior prudence. Accordingly, by the treaty of Conflans, he not only surrendered afresh the towns upon the Somme, which he had lately redeemed from the Duke of Burgundy, but invested his brother with the duchy of Normandy as his appanage.

The term appanage denotes the provision made for the younger children of the King of France. This always consisted of lands and feudal superiorities held of the crown by the tenure of peerage. It is evident that this usage, as it produced a new class of powerful feudatories, was hostile to the interests and policy of the sovereign, and retarded the subjugation of the ancient aristocracy. But an usage coeval with the monarchy was not to be abrogated, and the scarcity of money rendered it impossible to provide for the younger branches of the royal family by any other means. It was restrained, however, as far as circumstances would permit. Philip IV. declared that the county of Poitiers, bestowed by him on his son, should revert to the crown on the extinction of male heirs. But this, though an important precedent, was not, as has often been asserted, a general law. Charles V.

limited the appanages of his own sons to twelve thousand livres of annual value in land. By means of their appanages, and through the operation of the Salic law, which made their inheritance of the crown a less remote contingency, the princes of the blood royal in France were at all times (for the remark is applicable long after Louis XI.) a distinct and formidable class of men, whose influence was always disadvantageous to the reigning monarch, and, in general, to the people.

No appanage had ever been granted to France so enormous as the duchy of Normandy. One-third of the whole national revenue, it is declared, was derived from that rich province. Louis could not, therefore, sit down under such terms as, with his usual insincerity, he had accepted at Conflans. In a very short time he attacked Normandy, and easily compelled his brother to take refuge in Brittany; nor were his enemies ever able to procure the restitution of Charles's appanage. During the rest of his reign Louis had powerful coalitions to withstand; but his prudence and compliance with circumstances, joined to some mixture of good fortune, brought him safely through his perils. The Duke of Brittany, a prince of moderate talents, was unable to make any formidable impression, though generally leagued with the enemies of the king. The less powerful vassals were successfully crushed by Louis with decisive vigor; the duchy of Alençon was confiscated; the Count of Armagnac was assassinated; the Duke of Nemours, and the constable of St. Poll, a politician as treacherous as Louis, who had long betrayed both him and the Duke of Burgundy, suffered upon the scaffold. The king's brother Charles, after disquieting him for many years, died suddenly in Guienne, which had finally been granted as his appanage (A.D. 1472). Edward IV. of England was too dissipated and too indolent to be fond of war; and, though he once entered France with an army more considerable than could have been expected after such civil bloodshed as England had witnessed, he was induced, by the stipulation of a large pension, to give up the enterprise. So terrible was still in France the apprehension of an English war, that Louis prided himself upon no part of his policy so much as the warding this blow (A.D. 1475). Edward showed a desire to visit Paris; but the king gave him no invitation, lest, he said, his brother should find some handsome woman there, who might tempt him to return in a different manner. Hastings, Howard, and other of Edward's ministers, were secured by bribes in the interest of

Louis, which the first of these did not scruple to receive at the same time from the Duke of Burgundy.

§ 15. This was the most powerful enemy whom the craft of Louis had to counteract. In the last days of the feudal system, when the house of Capet had almost achieved the subjugation of those proud vassals among whom it had been originally numbered, a new antagonist sprang up to dispute the field against the crown. John, king of France, granted the duchy of Burgundy, by way of appanage, to his third son, Philip. By his marriage with Margaret, heiress of Louis, count of Flanders, Philip acquired that province, Artois, the *county* of Burgundy[1] (or Franche-comté), and the Nivernois. Philip the Good, his grandson, who carried the prosperity of this family to its height, possessed himself, by various titles, of the several other provinces which composed the Netherlands. These were fiefs of the empire, but latterly not much dependent upon it, and alienated by their owners without its consent. At the peace of Arras the districts of Macon and Auxerre were absolutely ceded to Philip, and great part of Picardy conditionally made over to him, redeemable on the payment of four hundred thousand crowns.

GENEALOGICAL TABLE OF THE SECOND DUCAL HOUSE OF BURGUNDY.

John, king of France, inherits the duchy as nearest heir male of the late Duke Philippe de Rouvre, 1361.

Philip, fourth son of King John, created Duke of Burgundy, 1364, ob. 1404.

Jean Sanspeur, killed at Montereau, 1419.

Philip (le Bon), ob. 1467.

Charles (le Téméraire), ob. 1477.

Mary, duchess of Burgundy = Maximilian, archduke of Austria.

Philip, archduke of Austria, and sovereign of the Netherlands, ob. 1506. = Juana, heiress of Castile and Aragon.

Charles V., king of Spain, sovereign of the Netherlands, and emperor, 1519.

These extensive, though not compact dominions, were abundant in population and wealth, fertile in corn, wine, and salt, and full of commercial activity. Thirty years of peace which followed the treaty of Arras, with a mild and free government, raised the subjects of Burgundy to a degree of prosperity quite unparalleled in these times of disorder; and this was displayed in general sumptuousness of dress and feasting. The court of Philip and of his son Charles was distinguished for its pomp and riches, for pageants and tourna-

[1] See NOTE VIII., p. 74.

ments; the trappings of chivalry, perhaps without its spirit, for the military character of Burgundy had been impaired by long tranquillity.

During the lives of Philip and Charles VII. each understood the other's rank, and their amity was little interrupted. But their successors, the most opposite of human kind in character, had one common quality, ambition, to render their antipathy more powerful. Louis was eminently timid and suspicious in policy; Charles intrepid beyond all men, and blindly presumptuous; Louis stooped to any humiliation to reach his aim; Charles was too haughty to seek the fairest means of strengthening his party. An alliance of his daughter with the Duke of Guienne, brother of Louis, was what the malcontent French princes most desired and the king most dreaded; but Charles, either averse to any French connection, or willing to keep his daughter's suitors in dependence, would never directly accede to that or any other proposition for her marriage. On Philip's death, in 1467, he inherited a great treasure, which he soon wasted in the prosecution of his schemes. These were so numerous and vast, that he had not time to live, says Comines, to complete them, nor would one-half of Europe have contented him. It was his intention to assume the title of king; and the emperor Frederick III. was at one time actually on his road to confer this dignity, when some suspicion caused him to retire, and the project was never renewed. It is evident that, if Charles's capacity had borne any proportion to his pride and courage, or if a prince less politic than Louis XI. had been his contemporary in France, the province of Burgundy must have been lost to the monarchy. For several years these great rivals were engaged, sometimes in open hostility, sometimes in endeavors to overreach each other; but Charles, though not much more scrupulous, was far less an adept in these mysteries of politics than the king.

Notwithstanding the power of Burgundy, there were some disadvantages in its situation. It presented (I speak of all Charles's dominions under the common name, Burgundy) a very exposed frontier on the side of Germany and Switzerland, as well as France; and Louis exerted a considerable influence over the adjacent princes of the empire, as well as the united Cantons. The people of Liege, a very populous city, had for a long time been continually rebelling against their bishops, who were the allies of Burgundy; Louis was of course not backward to foment their insurrections, which sometimes gave the dukes a good deal of trouble. The

Flemings, and especially the people of Ghent, had been during a century noted for their republican spirit and contumacious defiance of their sovereign. Liberty never wore a more unamiable countenance than among these burghers, who abused the strength she gave them by cruelty and insolence. Ghent was absolutely impregnable at a time when artillery was very imperfect both in its construction and management. Hence, though the citizens of Ghent were generally beaten in the field with great slaughter, they obtained tolerable terms from their masters, who knew the danger of forcing them to a desperate defense.

An almost uninterrupted success had attended the duke's enterprises for a length of time, and rendered his disposition still more overweening. His first failure was before Neuss, a little town near Cologne (A.D. 1474), the possession of which would have made him nearly master of the whole course of the Rhine, for he had already obtained the landgraviate of Alsace. Though compelled to raise the siege, he succeeded in occupying, next year, the duchy of Lorraine. But his overthrow was reserved for an enemy whom he despised, and whom none could have thought equal to the contest. The Swiss had given him some slight provocation, for which they were ready to atone; but Charles was unused to forbear; and perhaps Switzerland came within his projects of conquest. At Granson, in the Pays de Vaud, he was entirely routed, with more disgrace than slaughter. But having reassembled his troops and met the confederate army of Swiss and Germans at Morat, near Friburg, he was again defeated with vast loss. On this day the power of Burgundy was dissipated: deserted by his allies, betrayed by his mercenaries, he set his life upon another cast at Nancy, desperately giving battle to the Duke of Lorraine with a small dispirited army, and perished in the engagement (A.D. 1477).

§ 16. Now was the moment when Louis, who had held back while his enemy was breaking his force against the rocks of Switzerland, came to gather a harvest which his labor had not reaped. Charles left an only daughter, undoubted heiress of Flanders and Artois, as well as of his dominions out of France, but whose right of succession to the duchy of Burgundy was more questionable. Originally the great fief of the crown descended to females, and this was the case with respect to the two first mentioned. But John had granted Burgundy to his son Philip by way of appanage; and it was contended that the appanages reverted to the crown in default of male heirs. In the form of Philip's

investiture, the duchy was granted to him and his lawful heirs, without designation of sex. The construction, therefore, must be left to the established course of law. This, however, was by no means acknowledged by Mary, Charles's daughter, who maintained both that no general law restricted appanages to male heirs, and that Burgundy had always been considered as a feminine fief, John himself having possessed it, not by reversion as king (for descendants of the first dukes were then living) but by inheritance derived through females.

There was one obvious mode of preventing all further contest, and of aggrandizing the French monarchy far more than by the reunion of Burgundy. This was the marriage of Mary with the dauphin, which was ardently wished in France. Whatever obstacles might occur to this connection it was natural to expect on the opposite side—from Mary's repugnance to an infant husband, or from the jealousy which her subjects were likely to entertain of being incorporated with a country worse governed than their own. The arts of Louis would have been well employed in smoothing these impediments. But he chose to seize upon as many towns as, in those critical circumstances, lay exposed to him, and stripped the young duchess of Artois and Franche-comté. Expectations of the marriage he sometimes held out, but, as it seems, without sincerity. Indeed he contrived irreconcilably to alienate Mary by a shameful perfidy, betraying the ministers whom she had intrusted upon a secret mission to the people of Ghent, who put them to the torture, and afterwards to death, in the presence and amidst the tears and supplications of their mistress. Thus the French alliance becoming odious in France, this princess married (A.D. 1477) Maximilian of Austria, son of the Emperor Frederick—a connection which Louis strove to prevent, though it was impossible then to foresee that it was ordained to retard the growth of France and to bias the fate of Europe during three hundred years. This war lasted till after the death of Mary, who left one son, Philip, and one daughter, Margaret. By a treaty of peace concluded at Arras, in 1482, it was agreed that this daughter should become the dauphin's wife, with Franche-comté and Artois, which Louis held already, for her dowry, to be restored in case the marriage should not take effect. The homage of Flanders was reserved to the crown.

§ 17. Meanwhile Louis was lingering in disease and torments of mind, the retribution of fraud and tyranny. Two years before his death he was struck with an apoplexy, from

which he never wholly recovered. As he felt his disorder increasing, he shut himself up in a palace near Tours, to hide from the world the knowledge of his decline.[8] His solitude was like that of Tiberius at Capreæ, full of terror and suspicion, and deep consciousness of universal hatred. All ranks, he well knew, had their several injuries to remember: the clergy, whose liberties he had sacrificed to the See of Rome, by revoking the Pragmatic Sanction of Charles VII.; the princes, whose blood he had poured upon the scaffold; the Parliament, whose course of justice he had turned aside; the commons, who groaned under his extortion, and were plundered by his soldiery.[9] The palace, fenced with portcullises and spikes of iron, was guarded by archers and cross-bow-men, who shot at any that approached by night. Few entered this den; but to them he showed himself in magnificent apparel, contrary to his former custom, hoping thus to disguise the change of his meagre body. He distrusted his friends and kindred, his daughter and his son, the last of whom he had not suffered even to read or write, lest he should too soon become his rival. No man ever so much feared death, to avert which he stooped to every meanness and sought every remedy. His physician had sworn that if he were dismissed the king would not survive a week; and Louis, enfeebled by sickness and terror, bore the rudest usage from this man, and endeavored to secure his services by vast rewards. Always credulous in relics, though seldom restrained by superstition from any crime, he eagerly bought up treasures of this sort, and even procured a Calabrian hermit, of noted sanctity, to journey as far as Tours in order to restore his health. Philip de Comines, who attended him during his infirmity, draws a parallel between the torments he then endured and those he had formerly inflicted on others. Indeed the whole of his life was vexation of spirit. "I have known him," says Comines, "and been his servant in the flower of his age, and in the time of his greatest prosperity; but never did I see him without uneasiness and care. Of all amusements he loved only the chase, and hawking in its season. And in this he had almost as much uneasiness

[8] Plessis, his last residence, about an English mile from Tours, is now a dilapidated farm-house, and can never have been a very large building. The vestiges of royalty about it are few; but the principal apartments have been destroyed, either in the course of ages or at the revolution.

[9] See a remarkable chapter in Philip de Comines, l. iv. c. 19, wherein he tells us that Charles VII. had never raised more than 1,800,000 francs a year in taxes; but Louis XI., at the time of his death, raised 4,700,000, exclusive of some military impositions; et sure nent c'estoit compassion de voir et scavoir la pauvreté du peuple.

as pleasure; for he rode hard and got up early, and sometimes went a great way, and regarded no weather; so that he used to return very weary, and almost ever in wrath with some one. I think that from his childhood he never had any respite of labor and trouble to his death. And I am certain that if all the happy days of his life, in which he had more enjoyment than uneasiness, were numbered, they would be found very few; and at least that they would be twenty of sorrow for every one of pleasure."

§ 18. Charles VIII. was about thirteen years old when he succeeded his father Louis (A.D. 1483). Though the law of France fixed the majority of her kings at that age, yet it seems not to have been strictly regarded on this occasion, and at least Charles was a minor by nature, if not by law. A contest arose, therefore, for the regency, which Louis had intrusted to his daughter Anne, wife of the Lord de Beaujeu, one of the Bourbon family. The Duke of Orleans, afterwards Louis XII., claimed it as presumptive heir of the crown, and was seconded by most of the princes. Anne, however, maintained her ground, and ruled France for several years in her brother's name with singular spirit and address, in spite of the rebellions which the Orleans party raised up against her. These were supported by the Duke of Brittany, the last of the great vassals of the crown, whose daughter, as he had no male issue, was the object of as many suitors as Mary of Burgundy.

The duchy of Brittany was peculiarly circumstanced. The inhabitants, whether sprung from the ancient republicans of Armorica, or, as some have thought, from an emigration of Britons during the Saxon invasion, had not originally belonged to the body of the French monarchy. They were governed by their own princes and laws, though tributary, perhaps, as the weaker to the stronger, to the Merovingian kings. In the ninth century the dukes of Brittany did homage to Charles the Bold, the right of which was transferred afterwards to the dukes of Normandy. This formality, at that time no token of real subjection, led to consequences beyond the views of either party. For when the feudal chains that had hung so loosely upon the shoulders of the great vassals began to be straightened by the dexterity of the court, Brittany found itself drawn among the rest to the same centre. The old privileges of independence were treated as usurpation; the dukes were menaced with confiscation of their fief, their right of coining money disputed, their jurisdiction impaired by appeals to the Parliament of Paris.

However, they stood boldly upon their right, and always refused to pay *liege homage*, which implied an obligation of service to the lord, in contradistinction to *simple homage*, which was a mere symbol of feudal dependence. In Francis II., the then duke, the male line of that family was about to be extinguished. His daughter Anne was naturally the object of many suitors, and was at length married by proxy to Maximilian, king of the Romans (A.D. 1489). But France was resolved at all events to break off so dangerous a connection. And as Maximilian himself was unable, or took not sufficient pains, to relieve his betrothed wife from her embarrassments, she was ultimately compelled to accept the hand of Charles VIII. He had long been engaged by the treaty of Arras to marry the daughter of Maximilian, and that princess was educated at the French court. But this engagement had not prevented several years of hostilities, and continual intrigues with the towns of Flanders against Maximilian. The double injury which the latter sustained in the marriage of Charles with the heiress of Brittany seemed likely to excite a protracted contest; but the King of France, who had other objects in view, and perhaps was conscious that he had not acted a fair part, soon came to an accommodation, by which he restored Artois and Franche-comté. Both these provinces had revolted to Maximilian; so that Charles must have continued the war at some disadvantage (A.D. 1492).

France was now consolidated into a great kingdom: the feudal system was at an end. The vigor of Philip Augustus, the paternal wisdom of St. Louis, the policy of Philip the Fair, had laid the foundations of a powerful monarchy, which neither the arms of England, nor seditions of Paris, nor rebellions of the princes, were able to shake. Besides the original fiefs of the French crown, it had acquired two countries beyond the Rhone, which properly depended only upon the empire—Dauphiné, under Philip of Valois, by the bequest of Humbert, the last of its princes; and Provence, under Louis XI., by that of Charles of Anjou.[10] Thus having conquered herself, if I may use the phrase, and no longer apprehensive

[10] The country now called Dauphiné formed part of the kingdom of Arles or Provence, bequeathed by Rodolph III. to the emperor, Conrad I. But the dominion of the empire over these new acquisitions being little more than nominal, a few of the chief nobility converted their respective fiefs into independent principalities. One of these was the lord or dauphin of Vienne, whose family became ultimately masters of the whole province. Provence, like Dauphiné, was changed from a feudal dependency to a sovereignty, in the weakness and dissolution of the kingdom of Arles, about the early part of the eleventh century.

of any foreign enemy, France was prepared, under a monarch flushed with sanguine ambition, to carry her arms into other countries, and to contest the prize of glory and power upon the ample theatre of Europe.[11]

[11] See NOTE IX., "Authorities for French History."

NOTES TO CHAPTER I.

I. THE ARMORICAN REPUBLIC.

The existence of an Armorican Republic is now admitted by most French historians. Early in the fifth century, according to Zosimus (vi. 5), about the time when Constantine usurped the throne of Britain and Gaul, or, as the sense shows, a little later, in consequence of the incursions of the barbarians from beyond the Rhine, the natives of Britain, taking up arms for themselves, rescued their cities from these barbarians; and the whole Armorican territory, and other provinces of Gaul, in imitation of the Britons, liberated themselves in the same manner, expelling the Roman rulers, and establishing an internal government. Martin considers that this confederation extended as far as Aquitaine, and embraced some cities of the central provinces, as well as Armorica proper. —("Histoire de France," vol. i. p. 339.)

II. THE FRANKS.

The Franks are not among the German tribes mentioned by Tacitus, nor do they appear in history before the year 240. They were probably a confederation of the tribes situated between the Rhine, the Weser, and the Main; as the Alemanni were a similar league to the south of the last river. Their origin may be derived from the necessity of defending their independence against Rome; but they had become the aggressors in the period when we read of them in Roman history; and, like other barbarians in that age, were often the purchased allies of the declining empire. M. Lehuëron conceives them to have been a race of exiles or outlaws from other German tribes, taking the name Franc from *frech*, fierce or bold, and settling at first, by necessity, near the mouth of the Elbe, whence they moved onward to seek better habitations at the expense of less intrepid, though more civilized, nations. — ("Institutions Mérovingiennes," vol. i. p. 91.)

Although the Frankish tribes were nominally independent of each other, each possessing its own chieftain, yet in process of time a certain predominance was acquired by one or two over the rest. The warlike Salians, who towards the close of the third century obtained a fixed settlement in the north of Gaul, became, in consequence of this success and other advantages, the dominant tribe; and it was from one of their families, that of the *Merowings* or children of Merowig, that the confederation chose its military leaders, as occasion arose. Such is the origin of what is commonly called the Merovingian line of kings.

III. THE CONSULSHIP OF CLOVIS.

The theory of Dubos, who considers Clovis as a sort of lieutenant of the emperor's, and as governing the Roman part of his subjects by no other title, is partly countenanced by Gibbon, and has been revived, in almost its fullest extent, by a learned and spirited investigator of early history, Sir Francis Palgrave, in his "Rise and Progress of the English Commonwealth," i. 360. The truth seems to be that the investiture of Clovis with the consular dignity by the Eastern emperor, although it added nothing to his real power, was a fortunate circumstance of which the conqueror gladly took advantage to ratify and consolidate his already acquired sovereignty. It is plain, from the account given by Gregory of Tours, that both Clovis himself and his subjects, barbarian and Roman, attached considerable importance to the fact. M. Lehuëron, in his "Institutions Mérovingiennes," arrives at the following conclusions: That the definitive establishment of the Franks in Roman Gaul resulted at the same time from the voluntary concessions of the emperors and from their violent aggressions. That the Merovingians reigned partly by legitimate succession and partly by right

of conquest. That Clovis, whose reign did not commence till after the fall of the Western Empire, nevertheless recognized, like the Visigoths of Spain, the Ostrogoths of Italy, and the Burgundians of Gaul, the superiority, and up to a certain point the *suzerainship*, of the emperors of the East. That the Gallo-Roman provincials coincided in this view, and that consequently their acquiescence in the government of Clovis became more willing and more complete from the moment of his nomination as Consul and Patrician, acknowledged dignities of the ancient empire. Lastly, that, long after Clovis and his posterity had become independent masters of Gaul, the Merovingian princes looked upon the Eastern emperors as their *superiors*, and addressed them, when occasion arose, in terms expressive of this relationship.

IV. THE MAYOR OF THE PALACE.

The Mayor of the Palace appears as the first officer of the crown in the three Frank kingdoms during the latter half of the sixth century. He had the command, as Guizot supposes, of the Antrustions, or vassals of the king. Even afterwards the office was not, as this writer believes, properly elective, though in the case of a minority of the king, or upon other special occasions, the *leudes*, or nobles, chose a mayor. The first instance we find of such an election was in 575, when, after the murder of Sigebert by Fredegonde, his son Childebert being an infant, the Austrasian *leudes* chose Gogon for their mayor. There seem, however, so many instances of elective mayors in the seventh century, that, although the royal consent may probably have been legally requisite, it is hard to doubt that the office had fallen into the hands of the nobles.

V. AQUITAINE.

Aribert, or rather Caribert, brother of Dagobert I., was declared king of Aquitaine in 628; but on his death, in 631, it became a duchy dependent on the monarchy under his two sons, with its capital at Toulouse. This dependence, however, appears to have soon ceased, in the decay of the Merovingian line; and for a century afterwards Aquitaine can hardly be considered as part of either the Neustrian or Austrasian kingdom. Aquitaine, in its fullest extent, extended from the Loire beyond the Garonne, with the exception of Touraine and the Orléannois. The people of Aquitaine, in this large sense of the word, were chiefly Romans, with a few Goths. The Franks, as a conquering nation, had scarcely taken up their abode in these provinces. After the battle of Testry, which subverted the Neustrian monarchy, Aquitaine, and even Burgundy, ceased for a time to be French; under Charles Martel they were styled the Roman countries. (Michelet, ii. 9.) Eudon, by some called Eudes, grandson of Caribert, a prince of conspicuous qualities, gained ground upon the Franks during the whole period of Pepin Heristal's power, and united to Aquitaine not only Provence, but a new conquest from the independent natives, Gascony. Eudon obtained in 721 a far greater victory over the Saracens than that of Charles Martel at Poitiers. The slaughter was immense, and confessed by the Arabian writers; it even appears that a funeral solemnity, in commemoration of so great a calamity, was observed in Spain for four or five centuries afterwards. (Fauriel, iii. 79.) But in its consequences it was far less important; for the Saracens, some years afterwards, returned to avenge their countrymen, and Eudon had no resource but in the aid of Charles Martel. After the retreat of the enemy it became the necessary price of the service rendered by the Frank chieftain that Aquitaine acknowledged his sovereignty. This, however, was still but nominal, till Pepin determined to assert it more seriously, and after a long war overcame the last of the ducal line sprung from Clotaire II., which had displayed, for almost a century and a half, an energy in contrast with the imbecility of the elder branch. Even this, as M. Fauriel observes, was little more than a change in the reigning family; the men of Aquitaine never lost their peculiar nationality; they remained a separate people in Gaul, a people distinguished by their character, and by the part which they were called to play in the political revolutions of the age.

VI. THE SUBJECTION OF THE SAXONS.

The true cause, M. Michelet observes ("Hist. de France," ii., 39) of the Saxon wars, which had begun under Charles Martel, and were in some degree defensive on the part of the Franks, was the ancient antipathy of race, enhanced by the growing tendency to civilized habits among the latter. This, indeed, seems sufficient to account for the conflict, without any national antipathy. It was that which makes the Red Indian perceive an enemy in the Anglo-American, and the Australian savage in the Englishman. The Saxons, in their deep forests and scantily cultivated plains, could not bear fixed boundaries of

and. Their *gain* was indefinite; the *mansus* was certain; it annihilated the barbarian's only method of combining liberty with possession of land—the right of shifting his occupancy. It is not probable, from subsequent events, that the Saxons held very tenaciously by their religion; but when Christianity first offered itself, it came in the train of a conqueror. Nor could Christianity, according at least to the ecclesiastical system, be made compatible with such a state of society as the German in that age. Hence the Saxons endeavored to burn the first churches, thus drawing retaliation on their own idols.

The first apostles of Germany were English; and of these the most remarkable was St. Boniface. But this had been in the time of Charles Martel and Pepin. The labors of these missionaries were chiefly in Thuringia, Franconia, and Bavaria, and were rewarded with great success. But we may here consider them only in their results on the Frank monarchy. Those parts of Germany had long been subject to Austrasia, but, except so far as they furnished troops, scarcely formed an integrant portion of that kingdom. The subjection of a heathen tribe is totally different from that of a Christian province. With the Church came churches, and for churches there must be towns, and for towns a magistracy, and for magistracy law and the means of enforcing it. How different was the condition of Bavaria or Hesse in the ninth century from that of the same countries in the seventh! Not outlying appendages to the Austrasian monarchy, hardly counted among its subjects, but capable of standing by themselves, as co-ordinate members of the empire, an equipoise to France herself, full of populous towns, wealthy nobles and prelates, better organized and more flourishing states than their neighbors on the left side of the Rhine. Charlemagne founded eight bishoprics in Saxony, and distributed the country into dioceses.

VII. CHARLEMAGNE, EMPEROR.

The motive of Charlemagne in accepting the title of emperor has been much discussed. It is contended by Sir F. Palgrave that Charlemagne was chosen by the Romans as lawful successor of Constantine V., whom his mother Irene had dethroned in 795, the usage of the empire having never admitted a female sovereign. But it remains to be shown by what right Leo III., *cum omni Christiano populo*—that is, the priests and populace of degenerate Rome—could dispose of the entire empire, or affect to place a stranger on the throne of Constantinople; for if Charles were the successor of Constantine V., we must draw this conclusion. Rome, we should keep in mind, was not a jot more invested with authority than any other city; the Greek capital had long taken her place; and in every revolution of new Rome, the decrepit mother had without hesitation obeyed. Nor does it seem to me exceedingly material, if the case be such, that Charlemagne was not styled Emperor of the West, or successor of Augustulus. It is evident that his empire, relatively to that of the Greeks, was western; and we do not find that either he or his family ever claimed an exclusive right to the imperial title. The pretension would have been diametrically opposed both to prescriptive right and actual possession. He wrote to the Emperor Nicephorus, successor of Irene, as *fraternitas vestra;* but it is believed that the Greeks never recognized the title of a western barbarian. Mr. Hallam thinks that the probable design of Charlemagne, in accepting the title of emperor, was not only to extend his power as far as possible in Italy, but to invest it with a sort of sacredness and prescriptive dignity in the eyes of his barbarian subjects. These had been accustomed to hear of emperors as something superior to kings; they were themselves fond of pompous titles, and the chancery of the new Augustus soon borrowed the splendid ceremonial of the Byzantine court. But the real motive of Charlemagne in accepting the title of emperor has been more correctly appreciated by Mr. Maine in his work on "Ancient Law" (pp. 103–107). The conception of "territorial sovereignty" was at that time unknown, and, when the descendants of Clovis aspired to be something more than kings of the Franks, the only precedent which suggested itself was the title of Emperors of Rome. "The world had lain for so many centuries under the shadow of Imperial Rome as to have forgotten that distribution of the vast spaces comprised in the empire which had once parcelled them out into a number of independent commonwealths, claiming immunity from extrinsic interference, and pretending to equality of national rights. After the subsidence of the barbarian irruptions, the notion of sovereignty that prevailed seems to have been twofold. On the one hand it assumed the form of what may be called '*tribe* sovereignty.' Part of Transalpine Gaul, with part of Germany, had now become the country *de facto* occupied by the Franks—it was France; but the Merovingian line of chief-

tains, the descendants of Clovis, were not kings of France—they were kings of the Franks. The alternative to this peculiar notion of sovereignty appears to have been—and this is the important point—the idea of universal dominion. The moment a monarch departed from the special relation of chief to clansmen, and became solicitous, for purposes of his own, to invest himself with a novel form of sovereignty the only precedent which suggested itself for his adoption was the domination of the emperors of Rome. To parody a common quotation, he became '*aut Cæsar aut nullus*.' The chieftain who would no longer call himself king of the tribe must claim to be emperor of the world. Thus, when the hereditary Mayors of the Palace had ceased to compromise with the monarchs they had long since virtually dethroned, they soon became unwilling to call themselves kings of the Franks—a title which belonged to the displaced Merovings: but they could not style themselves kings of France, for such a designation, though apparently not unknown, was not a title of dignity. Accordingly they came forward as aspirants to universal empire. Territorial sovereignty—the view which connects sovereignty with the possession of a limited portion of the earth's surface—was distinctly an offshoot, though a tardy one, of *feudalism*."

VIII. THE KINGDOM OF BURGUNDY.

It is important for the student to bear in mind the different uses of the name Burgundy in different ages. Mr. Bryce has pointed out the ten senses in which the name generally occurs:

"I. The kingdom of the Burgundians (*regnum Burgundionum*), founded A.D. 406, occupying the whole valley of the Saône and lower Rhone, from Dijon to the Mediterranean, and including also the western half of Switzerland. It was destroyed by the sons of Clovis in A.D. 534.

"II. The kingdom of Burgundy (*regnum Burgundiæ*), mentioned occasionally under the Merovingian kings as a separate principality, confined within boundaries apparently somewhat narrower than those of the older kingdom last named.

"III. The kingdom of Provence or Burgundy (*regnum Provinciæ seu Burgundiæ*)—also, though less accurately, called the kingdom of Cis-Jurane Burgundy—was founded by Boso in A.D. 877, and included Provence, Dauphiné, the southern part of Savoy, and the country between the Saône and the Jura.

"IV. The kingdom of Trans-Jurane Burgundy (*regnum Iurenæ, Burgundia Transiurensis*), founded by Rudolph in A.D. 888, recognized in the same year by the Emperor Arnulf, included the northern part of Savoy, and all Switzerland between the Reuss and the Jura.

"V. The kingdom of Burgundy or Arles (*regnum Burgundiæ, regnum Arelatense*), formed by the union, under Conrad the Pacific, in A.D. 937, of the kingdoms described above as III. and IV. On the death, in 1032, of the last independent king, Rudolph III., it came partly by bequest, partly by conquest, into the hands of the Emperor Conrad II. (the Salic), and thenceforward formed a part of the Empire. In the thirteenth century, France began to absorb it, bit by bit, and has now (since the annexation of Savoy in 1861) acquired all except the Swiss portion of it.

"VI. The Lesser Duchy (*Burgundia Minor*), (Klein Burgund), corresponded very nearly with what is now Switzerland west of the Reuss, including the Valais. It was Trans-Jurane Burgundy (IV.) *minus* the parts of Savoy which had belonged to that kingdom. It disappears from history after the extinction of the house of Zahringen in the thirteenth century. Legally it was part of the Empire till A.D. 1648, though practically independent long before that date.

"VII. The Free County or Palatinate of Burgundy (Franche Comté), (Freigrafschaft), (called also Upper Burgundy), to which the name of Cis-Jurane Burgundy originally and properly belonged, lay between the Saône and the Jura. It formed a part of III. and V., and was therefore a fief of the Empire. The French dukes of Burgundy were invested with it in A.D. 1384, and in 1678 it was annexed to the crown of France.

"VIII. The Landgraviate of Burgundy (Landgrafschaft) was in Western Switzerland, on both sides of the Aar, between Thun and Solothurn. It was a part of the Lesser Duchy (VI.), and, like it, is hardly mentioned after the thirteenth century.

"IX. The Circle of Burgundy (Kreis Burgund), an administrative division of the Empire, was established by Charles V. in 1548; and included the Free County of Burgundy (VII.) and the seventeen provinces of the Netherlands, which Charles inherited from his grandmother Mary, daughter of Charles the Bold.

"X. The duchy of Burgundy (Lower Burgundy), (Bourgogne), the most northerly part of the old kingdom of the Burgundians, was always a fief of the crown of France, and a province of France till the Revolution. It was of this Burgundy

that Philip the Good and Charles the Bold were dukes. They were also counts of the Free County (VII.)."—"The Holy Roman Empire," pp. 437–439.

IX. AUTHORITIES FOR FRENCH HISTORY.

The history of France by Velly, Villaret, and Garnier, was the principal authority originally used by Mr. Hallam for this chapter, exclusive of original writers. The part of the Abbé Velly comes down to the middle of the eighth volume (12mo edition), and of the reign of Philip de Valois. His continuator, Villaret, was interrupted by death in the seventeenth volume, and in the reign of Louis XI. Subsequently Mr. Hallam observed that "this history is but slightly esteemed in France, especially the volumes written by the Abbé Velly. The writers were too much imbued with the spirit of the old monarchy (though no adulators of kings, and rather liberal according to the standard of their own age) for those who have taken the sovereignty of the people for their creed. Nor are they critical and exact enough for the present state of historical knowledge. Sismondi and Michelet, especially the former, are doubtless superior; but the reader will not find in the latter as regular a narration of facts as in Velly and Villaret. Sismondi has as many prejudices on one side as they have on the opposite." But the histories of Sismondi and Michelet are in their turn now superseded to a great extent by that of H. Martin.

CHAPTER II.

ON THE FEUDAL SYSTEM, ESPECIALLY IN FRANCE.

PART I.

§ 1. State of Ancient Germany. § 2. Effects of the Conquest of Gaul by the Franks. § 3. Tenures of Land. § 4. Roman Natives of Gaul. § 5. Proportion of Franks and Romans. § 6. Distinction of Laws. § 7. Constitution of the ancient Frank Monarchy. § 8. Origin of Nobility. § 9. Gradual Establishment of Feudal Tenures. § 10. Principles of a Feudal Relation. § 11. Ceremonies of Homage, Fealty, and Investiture. § 12. Obligations of a Vassal. Military Service. § 13. Feudal Incidents of Relief, Fines, Escheats, Aids, Wardship, Marriage. § 14. Different Species of Fiefs. § 15. Feudal Law-books.

§ 1. GERMANY, in the age of Tacitus, was divided among a number of independent tribes, differing greatly in population and importance. Their country, overspread with forests and morasses, afforded no large proportion of arable land. Nor did they ever occupy the same land two years in succession, if what Cæsar tells us may be believed, that fresh allotments were annually made by the magistrates. But this could not have been an absolute abandonment of land once cultivated, which Horace ascribes to the migratory Scythians. The Germans had fixed though not contiguous dwellings, and the inhabitants of the *gau* or township must have continued to till the same fields, though it might be with varying rights of separate property. They had kings elected out of particular families; and other chiefs, both for war and administration of justice, whom merit alone recommended to the public choice. But the power of each was greatly limited; and the decision of all leading questions, though subject to the previous deliberation of the chieftains, sprung from the free voice of a popular assembly. The principal men, however, of a German tribe fully partook of that estimation which is always the reward of valor, and commonly of birth. They were surrounded by a cluster of youths, the most gallant and ambitious of the nation, their pride at home, their protection in the field; whose ambition was flattered, or gratitude conciliated, by such presents as a leader of barbarians could confer. These were the institutions of the people who overthrew the empire of Rome, congenial to the spirit of infant societies, and such as travellers have found among nations in the same

stage of manners throughout the world. And although, in the lapse of four centuries between the ages of Tacitus and Clovis, some change was wrought by long intercourse with the Romans, yet the foundations of their political system were unshaken. If the Salic laws were in the main drawn up before the occupation of Gaul by the Franks, as seems the better opinion, it is manifest that lands were held by them in determinate several possession; and in other respects it is impossible that the manners described by Tacitus should not have undergone some alteration.

§ 2. When these tribes from Germany and the neighboring countries poured down upon the empire, and began to form permanent settlements, they made a partition of the lands in the conquered provinces between themselves and the original possessors. The Burgundians and Visigoths took two-thirds of their respective conquests, leaving the remainder to the Roman proprietor. Each Burgundian was quartered, under the gentle name of guest (*hospes*), upon one of the former tenants, whose reluctant hospitality confined him to the smaller portion of his estate. The Vandals in Africa, a more furious race of plunderers, seized all the best lands. The Lombards of Italy took a third part of the produce. We can not discover any mention of a similar arrangement in the laws or history of the Franks. It is, however, clear that they occupied, by public allotment or individual pillage, a great portion of the lands of France.

§ 3. The estates possessed by the Franks as their property were termed *allodial;* a word which is sometimes restricted to such as had descended by inheritance.[1] These were subject to no burden except that of public defense. They passed to all the children equally, or, in their failure, to the nearest kindred. But of these allodial possessions there was a particular species, denominated Salic, from which females were expressly excluded. What these lands

[1] Allodial lands are commonly opposed to beneficiary or feudal; the former being strictly proprietary, while the latter depended upon a superior. In this sense the word is of continual recurrence in ancient histories, laws, and instruments. It sometimes, however, bears the sense of *inheritance*. Hence, in the charters of the eleventh century, hereditary fiefs are frequently termed allodia. The word *allod* or *alod*, in Latin *alodis*, in French *alleu*, is of uncertain etymology. It has usually been thought to be compounded of *all* and *odh*, and would thus signify full or entire property: but MM. Guizot, Lehuëron, and other writers, derive it from the Teutonic *loos, sors*. The word *sors*, when applied to land means only an integral patrimony, as it means capital opposed to interest when applied to money. It is common in the civil law, and is no more than the Greek κλῆρος; but it had been peculiarly applied to the lands assigned by the Romans to the soldiery after a conquest, which some suppose to have been by lot. And hence this term was most probably adopted by the barbarians, or rather those who rendered their laws into Latin.

were, and what was the cause of the exclusion, has been much disputed. No solution seems more probable than that the ancient lawgivers of the Salian Franks prohibited females from inheriting the lands assigned to the nation upon the conquest of Gaul, both in compliance with their ancient usages, and in order to secure the military service of every proprietor. But lands subsequently acquired by purchase or other means, though equally bound to the public defense, were relieved from the severity of this rule, and presumed not to belong to the class of Salic.[2]

§ 4. A controversy has been maintained in France as to the condition of the Romans, or rather the provincial inhabitants of Gaul,[3] after the invasion of Clovis. While some bring the two nations, conquerors and conquered, almost to an equality, as the common subjects of a sovereign who had assumed the prerogatives of a Roman emperor; others find no closer analogy for their relative conditions than that of the Greeks and Turks in the days that have lately gone by. But it seems impossible to maintain either of these two theories. On the one hand, we find the Romans not only possessed of property, and governed by their own laws, but admitted to the royal favor and the highest offices; while the bishops and clergy, who were generally of that nation, grew up continually in popular estimation, in riches and in temporal sway. Yet a marked line was drawn at the outset between the conquerors and the conquered. Though one class of Romans retained estates of their own, yet there was another, called tributary, who seem to have cultivated those of the Franks, and were scarcely raised above the condition of predial servitude. But no distinction can be more unequivocal than that which was established between the two nations, in the *weregild*, or composition for homicide. Capital punishment for murder was contrary to the spirit of the Franks, who, like most barbarous nations, would have thought the loss of one citizen ill repaired by that of another. The weregild was paid to the relations of the slain, according to a legal rate. This was fixed by the Salic law at 600 solidi for an Antrustion of the king; at 300 for a Roman *conviva regis* (a man who had been admitted to the royal table); at 200 for a common Frank; at 100 for a Roman possessor of lands; and at 45 for a tributary, or cultivator of another's property. One essential difference separated the Frank

[2] See NOTE I., "On the Salic and other Laws of the Barbarians."

[3] It must be recollected that in the barbarian laws the word Roman is uniformly applied to the provincial inhabitants of Gaul.

from the Roman. The latter was subject to personal and territorial taxation.

§ 5. It can not be too frequently inculcated on the reader who desires to form a general but tolerably exact notion of the state of France under the first line of kings, that he is not hastily to draw inferences from one of the three divisions, Austrasia, Neustria, and Aquitaine, to which, for a part of the period, we must add Burgundy, to the rest. The difference of language, though not always decisive, furnishes a presumption of different origin. We may therefore estimate, with some probability, the proportion of Franks settled in the monarchy on the left bank of the Rhine, by the extent of country wherein the Teutonic language is spoken. The French or Walloon followed in that early age the irregular line which, running from Calais and St. Omer to Lisle and Tournay, stretches north of the Meuse as far as Liege, and, bending thence to the south-westward, passes through Longwy to Metz. These towns speak French, and spoke it under Charlemagne, if we can say that under Charlemagne French was spoken anywhere; at least they spoke a dialect of Latin origin. The exceptions are few; but where they exist, it is from the progress of French rather than the contrary.

The most remarkable evidence for the duration of the limit is the act of partition between Lothaire of Lorraine and Charles the Bald, in 870, whence it appears that the names of places where French is now spoken were then French. Nothing, says M. Michelet, can be more French than the Walloon country.[4] He expatiates almost with enthusiasm on the praise of this people, who seem to have retained a large share of his favorite Celtic element. It appears that the result of an investigation into the languages on the Alsatian frontier would be much the same. Here, therefore, we have a very reasonable presumption that the forefathers of the Flemish Belgians, as well as of the people of Alsace, were barbarians: some of the former may be sprung from Saxon colonies planted in Brabant by Charlemagne; but we may derive the majority from Salian and Ripuarian Franks. These were the strength of Austrasia, and among these the great restorer, or rather founder, of the empire fixed his capital at Aix-la-Chapelle.

In Aquitaine, on the other hand, every thing appears Roman, in contradistinction to Frank, except the reigning family. The chief difficulty, therefore, concerns Neustria; that is, from the Scheldt, or, perhaps, the Somme, to the Loire;

[4] "Hist. de France," viii., 287.

and to this important kingdom the advocates of the two nations, Roman and Frank, lay claim. M. Thierry has paid much attention to the subject, and come to the conclusion that, in the seventh century, the number of Frank land-holders, from the Rhine to the Loire, much exceeded that of the Roman. And this excess he takes to have been increased through the seizure of church lands in the next age by Charles Martel, who bestowed them on his German troops enlisted beyond the Rhine.[5]

We may, therefore, conclude that the Franks, even in the reign of Clovis, were rather a numerous people—including, of course, the Ripuarian as well as the Salian tribe. They certainly appear in great strength soon afterwards.

§ 6. The barbarous conquerors of Gaul and Italy were guided by notions very different from those of Rome, who had imposed her own laws upon all the subjects of her empire. Adhering in general to their ancient customs, without desire of improvement, they left the former habitations in unmolested enjoyment of their civil institutions. The Frank was judged by the Salic or the Ripuary code; the Gaul followed that of Theodosius. This grand distinction of Roman and barbarian, according to the law which each followed, was common to the Frank, Burgundian, and Lombard kingdoms. The name of Gaul or Roman was not entirely lost in that of Frenchman, nor had the separation of their laws ceased, even in the provinces north of the Loire, till after the time of Charlemagne. Ultimately, however, the feudal customs of succession, which depended upon principles quite remote from those of the civil law, and the rights of territorial justice which the barons came to possess, contributed to extirpate the Roman jurisprudence in that part of France. But in the south, from whatever cause, it survived the revolutions of the Middle Ages; and thus arose a leading division of that kingdom into *pays coutumiers* and *pays du droit*

[5] The method which Thierry has pursued, in order to ascertain this, is ingenious and presumptively right. He remarked that the names of the places will often indicate whether the inhabitants, or more often the chief proprietor, were of Roman or Teutonic origin. Thus Francouville and Romainville, near Paris, are distinguished in charters of the ninth century as *Francorum villa* and *Romanorum villa*. This is an instance where the population seems to have been of different race. But commonly the owner's Christian name is followed by a familiar termination. In that same neighborhood proper names of German origin, with the terminations *ville, court, mont, val*, and the like, are very frequent. And this he finds to be generally the case north of the Loire, compared with the left bank of that river. It is, of course, to be understood that this proportion of superior land-holders did not extend to the general population; for that, in all Neustrian France, was evidently composed of those who spoke the rustic Roman tongue—the corrupt language which, in the tenth or eleventh century, became worthy of the name of French: and this was the case, as we have just seen, in part of Austrasia, as Champagne and Lorraine.

écrit; the former regulated by a vast variety of ancient usages, the latter by the Roman law down to the French revolution; the laws of Justinian, in the progress of learning, having naturally taken the place of the Theodosian.[6]

§ 7. The kingdom of Clovis was divided into a number of districts, each under the government of a count, a name familiar to Roman subjects, by which they rendered the *graf* of the Germans.[7] The authority of this officer extended over all the inhabitants, as well Franks as natives. It was his duty to administer justice, to preserve tranquillity, to collect the royal revenues, and to lead, when required, the free proprietors into the field. The title of a duke implied a higher dignity, and commonly gave authority over several counties.[8] These offices were originally conferred during pleasure; but the claim of a son to succeed his father would often be found too plausible or too formidable to be rejected, and it is highly probable that, even under the Merovingian kings, these provincial governors had laid the foundations of that independence which was destined to change the countenance of Europe. The Lombard dukes, those especially of Spoleto and Benevento, acquired very early an hereditary right of governing their provinces, and that kingdom became a sort of federal aristocracy.

The throne of France was always filled by the royal house of Meroveus. However complete we may imagine the elective rights of the Franks, it is clear that a fundamental law restrained them to this family. Such, indeed, had been the monarchy of their ancestors the Germans; such long continued to be those of Spain, of England, and perhaps of all European nations. The reigning family was immutable; but at every vacancy the heir awaited the confirmation of a popular election, whether that were a substantial privilege or a mere ceremony. Exceptions, however, to the lineal succession are rare in the history of any country, unless where an infant heir was thought unfit to rule a nation of freemen. But, in fact, it is vain to expect a system of constitutional laws rigidly observed in ages of anarchy and ignorance. Those antiquaries who have maintained the most opposite

[6] This subject is fully treated in Savigny's work, "History of the Roman Law in the Middle Ages."

[7] The word *graf* was not always equivalent to *comes;* it took in some countries, as in England, the form *gerefa*, and stood for the *vicecomes* or sheriff, the count or alderman's deputy.

[8] Some have supposed these titles to have been applied indifferently. But the contrary is easily proved, and especially by a line of Fortunatus:

Qui modo dat Comitis, det tibi jura Ducis.

theories upon such points are seldom in want of particular instances to support their respective conclusions.

Clovis was a leader of barbarians, who respected his valor and the rank which they had given him, but were incapable of servile feelings, and jealous of their common as well as individual rights. In order to appreciate the power which he possessed, it has been customary with French writers to bring forward the well-known story of the vase of Soissons. When the plunder taken in Clovis's invasion of Gaul was set out in this place for distribution, he begged for himself a precious vessel belonging to the Church of Rheims. The army having expressed their willingness to consent, "You shall have nothing here," exclaimed a soldier, striking it with his battle-axe, "but what falls to your share by lot." Clovis took the vessel without marking any resentment, but found an opportunity, next year, of revenging himself by the death of the soldier. The whole behavior of Clovis appears to be that of a barbarian chief, not daring to withdraw any thing from the rapacity, or to chastise the rudeness, of his followers.

But if such was the liberty of the Franks when they first became conquerors of Gaul, we have good reason to believe that they did not long preserve it. A people not very numerous spread over the spacious provinces of Gaul, wherever lands were assigned to or seized by them. It became a burden to attend those general assemblies of the nation which were annually convened in the month of March, to deliberate upon public business, as well as to exhibit a muster of military strength. After some time it appears that these meetings drew together only the bishops, and those invested with civil offices. The ancient inhabitants of Gaul, having little notion of political liberty, were unlikely to resist the most tyrannical conduct. Many of them became officers of state, and advisers of the sovereign, whose ingenuity might teach maxims of despotism unknown in the forests of Germany. We shall scarcely wrong the bishops by suspecting them of more pliable courtliness than was natural to the long-haired warriors of Clovis. Yet it is probable that some of the Franks were themselves instrumental in this change of their government. The court of the Merovingian kings was crowded with followers, who have been plausibly derived from those of the German chiefs described by Tacitus; men forming a distinct and elevated class in the state, and known by the titles of Fideles, Leudes, and Antrustiones. They took an oath of fidelity to the king upon their admis-

sion into that rank, and were commonly remunerated with gifts of land. Under different appellations we find, as some antiquaries think, this class of courtiers in the early records of Lombardy and England. The general name of Vassals (from *Gwas*, a Celtic word for a servant) is applied to them in every country. By the assistance of these faithful supporters it has been thought that the regal authority of Clovis's successors was insured. However this may be, the annals of his more immediate descendants exhibit a course of oppression, not merely displayed, as will often happen among uncivilized people, though free, in acts of private injustice, but in such general tyranny as is incompatible with the existence of any real checks upon the sovereign.

But before the middle of the seventh century the kings of this line had fallen into that contemptible state which has been described in the last chapter. The mayors of the palace, who from mere officers of the court had now become masters of the kingdom, were elected by the Franks, not indeed the whole body of that nation, but the provincial governors and considerable proprietors of land. Some inequality there probably existed from the beginning in the partition of estates, and this had been greatly increased by the common changes of property, by the rapine of those savage times, and by royal munificence. Thus arose that landed aristocracy which became the most striking feature in the political system of Europe during many centuries, and is, in fact, its great distinction both from the despotism of Asia and the equality of republican governments.

§ 8. There has been some dispute about the origin of nobility in France, which might perhaps be settled, or at least better understood, by fixing our conception of the term. In our modern acceptation it is usually taken to imply certain distinctive privileges in the political order, inherent in the blood of the possessor, and consequently not transferable like those which poverty confers. Limited to this sense, nobility, I conceive, was unknown to the conquerors of Gaul till long after the downfall of the Roman Empire. They felt, no doubt, the common prejudice of mankind in favor of those whose ancestry is conspicuous, when compared with persons of obscure birth. This is the primary meaning of nobility, and perfectly distinguishable from the possession of exclusive civil rights. Those who are acquainted with the constitution of the Roman republic will recollect an instance of the difference between these two species of hereditary distinction, in the *patricii* and the *nobiles*. Though I

do not think that the tribes of German origin paid so much regard to genealogy as some Scandinavian and Celtic nations (else the beginnings of the greatest houses would not have been so enveloped in doubt as we find them), there are abundant traces of the respect in which families of known antiquity were held among them.

But the essential distinction of ranks in France, perhaps also in Spain and Lombardy, was founded upon the possession of land, or upon civil employment. The aristocracy of wealth preceded that of birth, which indeed is still chiefly dependent upon the other for its importance. A Frank of large estate was styled a noble; if he wasted or was despoiled of his wealth, his descendants fell into the mass of the people, and the new possessor became noble in his stead. Families were noble by descent, because they were rich by the same means. Wealth gave them power, and power gave them pre-eminence. But no distinction was made by the Salic or Lombard codes in the composition for homicide, the great test of political station, except in favor of the king's vassals. It seems, however, by some of the barbaric codes, those namely of the Burgundians, Visigoths, Saxons, and the English colony of the latter nation, that the free men were ranged by them into two or three classes, and a difference made in the price at which their lives were valued: so that there certainly existed the elements of aristocratic privileges, if we can not in strictness admit their completion at so early a period. The Antrustiones of the kings of the Franks were also noble, and a composition was paid for their murder treble of that for an ordinary citizen; but this was a personal, not an hereditary, distinction. A link was wanting to connect their eminent privileges with their posterity; and this link was to be supplied by hereditary benefices.

§ 9. Besides the lands distributed among the nation, others were reserved to the crown, partly for the support of its dignity, and partly for the exercise of its munificence. These are called *Fiscal Lands;* they were dispersed over different parts of the kingdom, and formed the most regular source of revenue. But the greater portion of them were granted out to favored subjects, under the name of BENEFICES, subsequently called FIEFS,[9] the nature of which is one of the most

[9] The term *fief* (*feodum*, *feudum*) began to be applied to benefices when they became hereditary, and first occurs in a capitulary of the reign of the Emperor Charles the Fat, A.D. 884. Different etymologies are given of this word; that which seems most probable derives it from *feh*, salary or pay, and *odh*, property—implying that it was land conferred as a reward or recompense of services. Others refer it to the Latin *fides;* others again, among whom is Lehnëron, prefer the Teutonic root *fëden*

important points in the policy of these ages. Benefices were, it is probable, most frequently bestowed upon the professed courtiers, the Antrustiones or Leudes, and upon the provincial governors. It by no means appears that any conditions of military service were expressly annexed to these grants: but it may justly be presumed that such favors were not conferred without an expectation of some return; and we read both in law and history that beneficiary tenants were more closely connected with the crown than mere allodial proprietors. Whoever possessed a benefice was expected to serve his sovereign in the field. But of allodial proprietors only the owner of three mansi[10] was called upon for personal service. Where there were three possessors of single mansi, one went to the army, and the others contributed to his equipment.

Most of those who have written upon the feudal system lay it down that benefices were originally precarious, and revoked at pleasure by the sovereign; that they were afterwards granted for life; and at a subsequent period became hereditary. No satisfactory proof, however, appears to have been brought of the first stage in this progress. The ordinary duration of benefices was at least the life of the possessor, after which they reverted to the fisc; but they soon became hereditary. Children would naturally put in a very strong claim to what their father had enjoyed; and the weakness of the crown in the seventh century must have rendered it difficult to reclaim its property. A natural consequence of hereditary benefices was that those who possessed them carved out portions to be held of themselves by a similar tenure. Abundant proofs of this custom, best known by the name of *Sub-Infeudation*, occur even in the capitularies of Pepin and Charlemagne. At a later period it became universal; and what had begun perhaps through ambition or pride was at last dictated by necessity. In that dissolution of all law which ensued after the death of Charlemagne, the powerful leaders, constantly engaged in domestic warfare, placed their chief dependency upon men whom they attached by gratitude, and bound by strong conditions. The oath of fidelity which they had taken, the homage which they had paid to the sovereign, they exacted from their own vassals.

nutrire. Sir F. Palgrave deduces it ingeniously, but with slight probability, from the Roman law-term *emphyteusis*.

[10] The precise area of a mansus is uncertain. It consisted, according to Du Cange, of twelve jugera; but what he meant by a juger is not stated. The ancient Roman juger was about five-eighths of an acre; the Parisian arpent was a fourth more than one. This would make a difference as two to one.

To render military service became the essential obligation which the tenant of a benefice undertook; and out of those ancient grants, now become for the most part hereditary, there grew up in the tenth century, both in name and reality, the system of feudal tenures.

This revolution was accompanied by another still more important. The provincial governors, the dukes and counts, to whom we may add the marquises or margraves intrusted with the custody of the frontiers, had taken the lead in all public measures after the decline of the Merovingian kings. Charlemagne, duly jealous of their ascendency, checked it by suffering the duchies to expire without renewal, by granting very few counties hereditarily, by removing the administration of justice from the hands of the counts into those of his own itinerant judges, and, if we are not deceived in his policy, by elevating the ecclesiastical order as a counterpoise to that of the nobility. But in the tenth century there followed an entire prostration of the royal authority, and the counts usurped their governments as little sovereignties, with the domains and all regalian rights, subject only to the feudal superiority of the king. They now added the name of the county to their own, and their wives took the appellation of countess. In Italy the independence of the dukes was still more complete; and although Otho the Great and his descendants kept a stricter rein over those of Germany, yet we find the great fiefs of their empire, throughout the tenth century, granted almost invariably to the male and even female heirs of the last possessor.

Meanwhile, the allodial proprietors were exposed to the rapacity of the counts, who, whether as magistrates and governors, or as overbearing lords, had it always in their power to harass them. Every district was exposed to continual hostilities; sometimes from a foreign enemy, more often from the owners of castles and fastnesses, which in the tenth century, under pretense of resisting the Normans and Hungarians, served the purposes of private war. Against such a system of rapine the military compact of lord and vassal was the only effectual shield; its essence was the reciprocity of service and protection. But an insulated allodialist had no support. Without law to redress his injuries, without the royal power to support his right, he had no course left but to compromise with oppression, and subject himself, in return for protection, to a feudal lord. This was usually called *commendation*, which created a personal relation between lord and vassal, closely resembling that of patron and client

in the Roman republic. Though originally this *commendation* had no relation to land, but created a merely personal tie—fidelity in return for protection—it is easy to conceive that the allodialist who obtained this privilege, as it might justly appear in an age of rapine, must often do so by subjecting himself to the law of tenure. In this way, during the tenth and eleventh centuries, allodial lands in France had chiefly become feudal.

There is a famous edict of the emperor Conrad II., surnamed the Salic, at Milan, in the year 1037, which, though immediately relating only to Lombardy, marks the full maturity of the feudal system, and the last stage of its progress. Four regulations of great importance are established therein: that no man should be deprived of his fief, whether held of the emperor or a mesne lord, but by the laws of the empire and the judgment of his peers; and that from such judgment an immediate vassal might appeal to his sovereign; that fiefs should be inherited by sons and their children, or, in their failure, by brothers, provided they were *feuda paterna*, such as had descended from the father; and that the lord should not alienate the fief of his vassal without his consent.

Such was the progress of these feudal tenures, which determined the political character of every European monarchy where they prevailed, as well as formed the foundations of its jurisprudence. It is important to keep in mind that the feudal system was the general establishment of a peculiar relation between the sovereign (not as king, but as lord) and his immediate vassals; between these again and others standing to them in the same relation of vassalage, and thus frequently through several links in the chain of tenancy. If this relation, and especially if the latter and essential element, sub-infeudation, is not to be found, there is no feudal system, though there are many analogies to it, more or less remarkable or strict. If the reader asks what were the immediate causes of establishing this polity we must refer him to three alone—to the grants of beneficiary lands to the vassal and his heirs, without which there could hardly be sub-infeudation; to the analogous grants of official honors, particularly that of count or governor of a district; and, lastly, to the voluntary conversion of allodial into feudal tenure, through free land-holders submitting their persons and estates, by way of commendation, to a neighboring lord or to the count of a district. All these—though several instances, especially of the first, occurred much earlier—be-

long generally to the ninth century, and may be supposed to have been fully accomplished about the beginning of the tenth; to which period, therefore, and not to an earlier one, we refer the feudal system in France. It is now time to describe the legal qualities and effects of this relation, so far only as may be requisite to understand its influence upon the political system.

§ 10. The essential principle of a fief was a mutual contract of support and fidelity. Whatever obligations it laid upon the vassal of service to his lord, corresponding duties of protection were imposed by it on the lord towards his vassal. If these were transgressed on either side, the one forfeited his land, the other his seigniory or rights over it. Nor were motives of interest left alone to operate in securing the feudal connection. The associations founded upon ancient custom and friendly attachment, the impulses of gratitude and honor, the dread of infamy, the sanctions of religion, were all employed to strengthen these ties, and to render them equally powerful with the relations of nature, and far more so than those of political society. It was a question agitated among the feudal lawyers, whether a vassal was bound to follow the standard of his lord against the king. In the works of those who wrote when the feudal system was declining, or who were anxious to maintain the royal authority, this is commonly decided in the negative. But it was not so during the height of the feudal system in France. The vassals of Henry II. and Richard I. never hesitated to adhere to them against the sovereign, nor do they appear to have incurred any blame on that account.

§ 11. The ceremonies used in conferring a fief were principally three—Homage, Fealty, and Investiture. 1. The first was designed as a significant expression of the submission and devotedness of the vassal towards his lord. In performing *Homage*,[11] his head was uncovered, his belt ungirt, his sword and spurs removed; he placed his hands, kneeling, between those of the lord, and promised to become his man from thenceforward; to serve him with life and limb and worldly honor, faithfully and loyally, in consideration of the lands which he held under him. None but the lord in person could accept homage, which was commonly concluded by a kiss. 2. An oath of *Fealty*[12] was indispensable in every fief; but the ceremony was less peculiar than that of homage, and it might be received by proxy. It was taken by ecclesiastics, but not by minors; and in language differed lit-

[11] *Homagium, hominium.* [12] *Fidelitas.*

tle from the form of homage. 3. *Investiture*,[13] or the actual conveyance of feudal lands, was of two kinds; proper and improper. The first was an actual putting in possession upon the ground, either by the lord or his deputy; which is called, in our law, livery of seisin. The second was symbolical, and consisted in the delivery of a turf, a stone, a wand, a branch, or whatever else might have been made usual by the caprice of local custom.

§ 12. Upon investiture, the duties of the vassal commenced. These it is impossible to define or enumerate; because the services of military tenure, which is chiefly to be considered, were in their nature uncertain, and distinguished as such from those incident to feuds of an inferior description. It was a breach of faith to divulge the lord's counsel, to conceal from him the machinations of others, to injure his person or fortune, or to violate the sanctity of his roof and the honor of his family. In battle he was bound to lend his horse to his lord when dismounted; to adhere to his side, while fighting; and to go into captivity as a hostage for him, when taken. His attendance was due to the lord's courts, sometimes to witness, and sometimes to bear a part in, the adminstration of justice.

The measure, however, of military service was generally settled by some usage. Forty days was the usual term during which the tenant of a knight's fee was bound to be in the field at his own expense. This was extended by St. Louis to sixty days, except when the charter of infeudation expressed a shorter period. But the length of service diminished with the quantity of land. For half a knight's fee but twenty days were due; for an eighth part but five; and when this was commuted for an escuage or pecuniary assessment, the same proportion was observed."[14] Men turned of sixty, public magistrates, and, of course, women, were free from personal service, but obliged to send their substitutes. A failure in this primary duty incurred perhaps strictly a forfeiture of the fief. But it was usual for the lord to inflict an amercement, known in England by the name of *escuage*. The regulations as to the place of service were less uniform than those which regarded time. In some places the vassal was not bound to go beyond the lord's territory, or only so far as that he might return the same day. Other customs

[13] *Investitura.*

[14] The knight's fee was fixed in England at the annual value of £20. Every estate supposed to be of this value, and entered as such in the rolls of the exchequer, was bound to contribute the service of a soldier, or to pay an escuage to the amount assessed upon knights' fee.

compelled him to follow his chief upon all his expeditions. These inconvenient and varying usages betrayed the origin of the feudal obligations, not founded upon any national policy, but springing from the chaos of anarchy and intestine war, which they were well calculated to perpetuate. For the public defense their machinery was totally unserviceable, until such changes were wrought as destroyed the character of the fabric.

§ 13. Independently of the obligations of fealty and service, which the nature of the contract created, other advantages were derived from it by the lord, which have been called feudal incidents: these were, 1. Reliefs. 2. Fines upon alienation. 3. Escheats. 4. Aids; to which may be added, though not generally established, 5. Wardship, and 6. Marriage.

(1.) A *Relief* was a sum of money (unless where charter or custom introduced a different tribute) due from every one of full age, taking a fief by descent. This was in some countries arbitrary, and the exactions practised under this pretense both upon superior and inferior vassals, ranked among the greatest abuses of the feudal policy. Henry I. of England promises in his charter that they shall in future be just and reasonable; but the rate does not appear to have been finally settled till it was laid down in Magna Charta at about a fourth of the annual value of the fief. By a law of St. Louis, in 1245, the lord was entitled to enter upon the lands, if the heir could not pay the relief, and possess them for a year. This right existed unconditionally in England under the name of primer seisin, but was confined to the king.

(2.) Closely connected with reliefs were the *Fines upon alienation*—that is, the fines paid to the lord upon the alienation of his vassal's feud; and indeed we frequently find them called by the same name. The spirit of feudal tenure established so intimate a connection between the two parties that it could be dissolved by neither without requiring the other's consent. If the lord transferred his seigniory, the tenant was to testify his concurrence; and this ceremony was long kept up in England under the name of attornment. The assent of the lord to his vassal's alienation was still more essential, and more difficult to be attained. He had received his fief, it was supposed, for reasons peculiar to himself or to his family; at least his heart and arm were bound to his superior; and his service was not to be exchanged for that of a stranger, who might be unable or unwilling to render it. By the law of France the lord was entitled, upon every alien-

ation made by his tenant, either to redeem the fief by paying the purchase-money, or to claim a certain part of the value, by way of fine, upon the change of tenancy.[18]

(3.) *Escheats.*—As fiefs descended but to the posterity of the first taker, or at the utmost to his kindred, they necessarily became sometimes vacant for want of heirs; especially where, as in England, there was no power of devising them by will. In this case it was obvious that they ought to revert to the lord, from whose property they had been derived. These reversions became more frequent through the forfeitures occasioned by the vassal's delinquency, either towards his superior lord or the estate. Various cases are laid down in the "Assises de Jérusalem," where the vassal forfeits his land for a year, for his life, or forever. But under rapacious kings, such as the Norman line in England, absolute forfeitures came to prevail, and a new doctrine was introduced—the corruption of blood, by which the heir was effectually excluded from deducing his title at any distant time though an attainted ancestor.

(4.) Reliefs, fines upon alienation, and escheats, seem to be natural reservations in the lord's bounty to his vassal. He had rights of another class which principally arose out of fealty and intimate attachment. Such were the *aids* which he was entitled to call for in certain prescribed circumstances. These depended a great deal upon local custom, and were often extorted unreasonably. Hence by Magna Charta three only were retained in England—to make the lord's eldest son a knight, to marry his eldest daughter, and to redeem his person from prison. They were restricted to nearly the same description by a law of William I. of Sicily, and by the customs of France. These feudal aids are deserving of our attention, as the beginnings of taxation, of which for a long time they in a great measure answered the purpose, till the craving necessities and covetous policy of kings substituted for them more durable and onerous burdens.

I might here, perhaps, close the enumeration of feudal incidents, but that the two remaining, wardship and marriage, though only partial customs, were those of our own country,

[18] In England even the practice of sub-infeudation, which was more conformable to the law of fiefs and the military genius of the system, but injurious to the suzerains, who lost thereby their escheats and other advantages of seigniory, was checked by Magna Charta, and forbidden by the statute 18 Edward I., called Quia Emptores, which at the same time gave the liberty of alienating lands to be holden of the grantor's immediate lord. The tenants of the crown were not included in this act; but that of 1 Edward III., c. 12, enabled them to alienate, upon the payment of a composition into chancery, which was fixed at one-third of the annual value of the lands.

and tend to illustrate the rapacious character of a feudal aristocracy.

(5.) In England, and in Normandy, which either led the way to, or adopted, all these English institutions, the lord had the *wardship* of his tenant during minority. By virtue of this right he had both the care of his person and received to his own use the profits of the estate. There is something in this custom very conformable to the feudal spirit, since none was so fit as the lord to train up his vassal to arms, and none could put in so good a claim to enjoy the fief, while the military service for which it had been granted was suspended. This privilege of guardianship seems to have been enjoyed by the lord in some parts of Germany; but in the law of France the custody of the land was intrusted to the next heir, and that of the person, as in socage tenures among us, to the nearest kindred of that blood which could not inherit. By a gross abuse of this custom in England, the right of guardianship in chivalry, or temporary possession of the lands, was assigned over to strangers. This was one of the most vexatious parts of our feudal tenures, and was never, perhaps, more sorely felt than in their last stage under the Tudor and Stuart families.

(6.) Another right given to the lord by the Norman and English laws was that of *Marriage*, or of tendering a husband to his female wards while under age, whom they could not reject without forfeiting the value of the marriage—that is, as much as any one would give to the guardian for such an alliance. This was afterwards extended to male wards, and became a very lucrative source of extortion to the crown, as well as to mesne lords. This custom seems to have had the same extent as that of wardships. It is found in the ancient books of Germany, but not of France. The kings, however, and even inferior lords, of that country, required their consent to be solicited for the marriage of their vassals' daughters. Several proofs of this occur in the history as well as in the laws of France; and the same prerogative existed in Germany, Sicily, and England.

These feudal servitudes distinguish the maturity of the system. No trace of them appears in the capitularies of Charlemagne and his family, nor in the instruments by which benefices were granted. I believe that they did not make part of the regular feudal law before the eleventh, or, perhaps, the twelfth century, though doubtless partial usages of this kind had grown up antecedently to either of those periods. Indeed, that very general commutation of allodial prop-

erty into tenure which took place between the middle of the ninth and eleventh centuries would hardly have been effected if fiefs had then been liable to such burdens and so much extortion. In half-barbarous ages the strong are constantly encroaching upon the weak; a truth which, if it needed illustration, might find it in the progress of the feudal system.

§ 14. We have thus far confined our inquiry to fiefs holden on terms of military service; since those are the most ancient and regular, as well as the most consonant to the spirit of the system. They alone were called *proper feuds*, and all were presumed to be of this description until the contrary was proved by the charter of investiture. A proper feud was bestowed without price, without fixed stipulation, upon a vassal capable of serving personally in the field. But gradually, with the help of a little legal ingenuity, *improper fiefs* of the most various kinds were introduced, retaining little of the characteristics, and less of the spirit, which distinguished the original tenures. Women, if indeed that were an innovation, were admitted to inherit them; they were granted for a price, and without reference to military service. The language of the feudal law was applied by a kind of metaphor to almost every transfer of property. Hence pensions of money and allowance of provisions, however remote from right notions of a fief, were sometimes granted under that name; and even where land was the subject of the donation, its conditions were often lucrative, often honorary, and sometimes ludicrous.

There is one extensive species of feudal tenure which may be distinctly noticed. The pride of wealth in the Middle Ages was principally exhibited in a multitude of dependents. The court of Charlemagne was crowded with officers of every rank, some of the most eminent of whom exercised functions about the royal person which would have been thought fit only for slaves in the palace of Augustus or Antonine. The free-born Franks saw nothing menial in the titles of cupbearer, steward, marshal, and master of the horse, which are still borne by the noblest families in many parts of Europe, and, till lately, by sovereign princes in the empire. From the court of the king this favorite piece of magnificence descended to those of the prelates and barons, who surrounded themselves with household officers called ministerials; a name equally applied to those of a servile and of a liberal description. The latter of these were rewarded with grants of lands, which they held under a feudal tenure by the condition of performing some domestic service to the lord.

What was called in our law grand sergeanty affords an instance of this species of fief.[16]

These imperfect feuds, however, belong more properly to the history of law, and are chiefly noticed in the present sketch because they attest the partiality manifested during the Middle Ages to the name and form of a feudal tenure. In the regular military fief we see the real principle of the system, which might originally have been defined an alliance of free land-holders arranged in degrees of subordination according to their respective capacities of affording mutual support.

§ 15. The peculiar and varied attributes of feudal tenures naturally gave rise to a new jurisprudence, regulating territorial rights in those parts of Europe which had adopted the system. For a length of time this rested in traditionary customs observed in the domains of each prince or lord, without much regard to those of his neighbors. Laws were made occasionally by the emperor in Germany and Italy, which tended to fix the usages of those countries. About the year 1170, Girard and Obertus, two Milanese lawyers, published two books of the law of fiefs, which obtained a great authority, and have been regarded as the groundwork of that jurisprudence. A number of subsequent commentators swelled this code with their glosses and opinions, to enlighten or obscure the judgment of the imperial tribunals. These were chiefly civilians or canonists, who brought to the interpretation of old barbaric customs the principles of a very different school. Hence a manifest change was wrought in the law of feudal tenure, which they assimilated to the usufruct or the emphyteusis of the Roman code; modes of property somewhat analogous in appearance, but totally distinct in principle, from the legitimate fief. These Lombard lawyers propagated a doctrine which has been too readily received, that the feudal system originated in their country. But whatever weight it may have possessed within the limits of the empire, a different guide must be followed in the ancient customs of France and England. These were fresh from the fountain of that curious polity with which the stream of Roman law had never mingled its waters. In England we know that the Norman system established be-

[16] "This tenure," says Littleton, "is where a man holds his lands or tenements of our sovereign lord the king by such services as he ought to do in his proper person to the king, as to carry the banner of the king, or his lance, or to lead his array, or to be his marshal, or to carry his sword before him at his coronation, or to be his sewer at his coronation, or his carver, or his butler, or to be one of his chamberlains at the receipt of his exchequer, or to do other like services."—Sect. 153.

tween the Conquest and the reign of Henry II. was restrained by regular legislation, by paramount courts of justice, and by learned writings, from breaking into discordant local usages, except in a comparatively small number of places, and has become the principal source of our common law. But the independence of the French nobles produced a much greater variety of customs. The whole number collected and reduced to certainty in the sixteenth century amounted to two hundred and eighty-five, or, omitting those inconsiderable for extent or peculiarity, to sixty. The earliest written customary in France is that of Bearn, which is said to have been confirmed by Viscount Gaston IV. in 1088. Many others were written in the two subsequent ages, of which the customs of Beauvoisis, compiled by Beaumanoir under Philip III., are the most celebrated, and contain a mass of information on the feudal constitution and manners. Under Charles VII. an ordinance was made for the formation of a general code of customary law, by ascertaining forever in a written collection those of each district; but the work was not completed till the reign of Charles IX. This was what may be called the common law of the *pays coutumiers*, or northern division of France, and the rule of all their tribunals, unless where controlled by royal edicts.

PART II.

§ 1. Analysis of the Feudal System. § 2. Its Local Extent. § 3. View of the different Orders of Society during the Feudal Ages. Nobility. Their Ranks and Privileges. § 4. Clergy. § 5. Freemen. § 6. Serfs or Villeins. § 7. Comparative State of France and Germany. § 8. Privileges enjoyed by the French Vassals. Right of coining Money. § 9. Right of Private War. § 10. Immunity from Taxation. Historical View of the Royal Revenue in France. Methods adopted to augment it by Depreciation of the Coin, etc. § 11. Legislative Power. Its State under the Merovingian Kings, and Charlemagne. His Councils. § 12. Suspension of any general legislative Authority during the Prevalence of Feudal Principles. The King's Council. § 13. Means adopted to supply the Want of a National Assembly. § 14. Gradual Progress of the King's Legislative Power. § 15. Philip IV. assembles the States-General. Their Powers limited to Taxation. § 16. States under the Sons of Philip IV. § 17. States of 1355 and 1356. They nearly effect an entire Revolution. § 18. The Crown recovers its Vigor. § 19. States of 1380, under Charles VI. Subsequent Assemblies under Charles VI. and Charles VII. § 20. The Crown becomes more and more absolute. Louis XI. § 21. States of Tours in 1484. § 22. Historical View of Jurisdiction in France. Its earliest Stage under the first Race of Kings, and Charlemagne. § 23. Territorial Jurisdiction. Feudal Courts of Justice. § 24. Trial by Combat. § 25. Code of St. Louis. § 26. The territorial Jurisdictions give way. Progress of the Judicial Power of the Crown. § 27. Parliament of Paris. § 28. Peers of France. § 29. Increased Authority of the Parliament. Registration of Edicts. § 30. Causes of the Decline of the Feudal System. Acquisitions of Domain by the Crown. § 31. Charters of Incorporation granted to Towns. First Charters in the Twelfth Century. § 32. Privileges contained in them. § 33. Military Service of Feudal Tenants commuted for Money. Hired Troops. Change in the Military System of Europe. § 34. Decay of Feudal Principles. § 35. General View of the Advantages and Disadvantages attending the Feudal System.

§ 1. THE advocates of a Roman origin for most of the institutions which we find in the kingdoms erected on the ruins of the empire are naturally prone to magnify the analogies to feudal tenure which Rome presents to us, and even to deduce it either from the ancient relation of patron and client, and that of personal commendation, which was its representative in a later age, or from the frontier lands granted in the third century to the Læti, or barbarian soldiers, who held them, doubtless, subject to a condition of military service. The usage of *commendation* especially, so frequent in the fifth century, before the conquest of Gaul, as well as afterwards, does certainly bear a strong analogy to vassalage, and I have already pointed it out as one of its sources. It wanted, however, that definite relation to the tenure of land which distinguished the latter. The royal Antrustio (whether the word *commendatus* were applied to him or not) stood bound by gratitude and loyalty to his sovereign, and in a very different degree from a common

subject; but he was not perhaps strictly a vassal till he had received a territorial benefice.[1] The complexity of sub-infeudation could have no analogy in commendation. The grants to veterans and to the Læti are so far only analogous to fiefs, that they established the principle of holding lands on a condition of military service. But this service was no more than what, both under Charlemagne and in England, if not in other times and places, the allodial freeholder was bound to render for the defense of the realm; it was more commonly required, because the lands were on a barbarian frontier; but the duty was not even *very* analogous to that of a feudal tenant. The essence of a fief seems to be, that its tenant owed fealty to a lord, and not to the state or the sovereign; the lord might be the latter, but it was not, feudally speaking, as a sovereign that he was obeyed. This is, therefore, sufficient to warrant us in tracing the real theory of feuds no higher than the Merovingian history in France; their full establishment, as has been seen, is considerably later. But the preparatory steps in the constitutions of the declining empire are of considerable importance, not merely as analogies, but as predisposing circumstances, and even germs to be subsequently developed. The beneficiary tenure of lands could not well be brought by the conquerors from Germany; but the donatives of arms or precious metals bestowed by the chiefs on their followers were also analogous to fiefs; and, as the Roman institutions were one source of the law of tenure, so these were another.

It is of great importance to be on our guard against seeming analogies which vanish away when they are closely observed. We should speak inaccurately if we were to use the word *feudal* for the service of the Irish or Highland clans to their chieftain; their tie was that of imagined kindred and respect for birth, not the spontaneous compact of vassalage. Much less can we extend the name of feud, though it is sometimes strangely misapplied, to the polity of Poland and Russia. All the Polish nobles were equal in rights, and independent of each other; all who were less than noble were in servitude. No government can be more opposite to the long gradations and mutual duties of the feudal system.

§ 2. The regular machinery and systematic establishment of feuds, in fact, may be considered as almost confined to the dominions of Charlemagne, and to those countries which

[1] This word "vassal" is used very indefinitely; it means, in its original sense, only a servant or dependent. But in the Continental records of histories we commonly find it applied to feudal tenants.

afterwards derived it from thence. In England it can hardly be thought to have existed in a complete state before the Conquest. Scotland, it is supposed, borrowed it soon after from her neighbor. The Lombards of Benevento had introduced feudal customs into the Neapolitan provinces, which the Norman conquerors afterwards perfected. Feudal tenures were so general in the kingdom of Aragon, that I reckon it among the monarchies which were founded upon that basis. Charlemagne's empire, it must be remembered, extended as far as the Ebro. But in Castile and Portugal they were very rare, and certainly could produce no political effect. Benefices for life were sometimes granted in the kingdoms of Denmark and Bohemia. Neither of these, however, nor Sweden nor Hungary, come under the description of countries influenced by the feudal system. That system, however, after all these limitations, was so extensively diffused, that it might produce confusion as well as prolixity to pursue collateral branches of its history in all the countries where it prevailed. But this embarrassment may be avoided without any loss, I trust, of important information. The English constitution will find its place in another portion of this volume; and the political condition of Italy, after the eleventh century, was not much affected, except in the kingdom of Naples, by the laws of feudal tenure. I shall confine myself, therefore, chiefly to France and Germany; and far more to the former than the latter country. But it may be expedient first to contemplate the state of society in its various classes during the prevalence of feudal principles, before we trace their influence upon the national government.

§ 3. It has been laid down already as most probable that no proper aristocracy, except that of wealth, was known under the early kings of France; and it was hinted that hereditary benefices, or, in other words, fiefs, might supply the link that was wanting between personal privileges and those of descent. The possessors of beneficiary estates were usually the richest and most conspicuous individuals in the estate. They were immediately connected with the crown, and partakers in the exercise of justice and royal counsels. Their sons now came to inherit this eminence; and, as fiefs were either inalienable, or at least not very frequently alienated, rich families were kept long in sight; and, whether engaged in public affairs, or living with magnificence and hospitality at home, naturally drew to themselves popular estimation. The dukes and counts, who had changed their

quality of governors into that of lords over the provinces intrusted to them, were at the head of this noble class. And in imitation of them, their own vassals, as well as those of the crown, and even rich allodialists, assumed titles from their towns or castles, and thus arose a number of petty counts, barons, and viscounts. This distinct class of nobility became co-extensive with the feudal tenures. For the military tenant, however poor, was subject to no tribute; no prestation, but service in the field: he was the companion of his lord in the sports and feasting of his castle, the peer of his court; he fought on horseback, he was clad in the coat of mail, while the commonalty, if summoned at all to war, came on foot, and with no armor of defense. As every thing in the habits of society conspired with that prejudice which, in spite of moral philosophers, will constantly raise the profession of arms above all others, it was a natural consequence that a new species of aristocracy, founded upon the mixed considerations of birth, tenure, and occupation, sprung out of the feudal system. Every possessor of a fief was a gentleman, though he owned but a few acres of land, and furnished his slender contribution towards the equipment of a knight.

There still, however, wanted something to ascertain gentility of blood where it was not marked by the actual tenure of land. This was supplied by two innovations devised in the eleventh and twelfth centuries—the adoption of surnames and of armorial bearings. The first are commonly referred to the former age, when the nobility began to add the names of their estates to their own, or, having any way acquired a distinctive appellation, transmitted it to their posterity. As to armorial bearings, there is no doubt that emblems somewhat similar have been immemorially used both in war and peace. The shields of ancient warriors, and devices upon coins or seals, bear no distant resemblance to modern blazonry. But the general introduction of such bearings, as hereditary distinctions, has been sometimes attributed to tournaments, wherein the champions were distinguished by fanciful devices; sometimes to the Crusades, where a multitude of all nations and languages stood in need of some visible token to denote the banners of their respective chiefs. In fact, the peculiar symbols of heraldry point to both these sources, and have been borrowed in part from each. Hereditary arms were perhaps scarcely used by private families before the beginning of the thirteenth century. From that time, however, they became very general, and

have contributed to elucidate that branch of history which regards the descent of illustrious families.

When the privileges of birth had thus been rendered capable of legitimate proof, they were enhanced in a great degree, and a line drawn between the high-born and ignoble classes almost as broad as that which separated liberty from servitude. All offices of trust and power were conferred on the former; those excepted which appertain to the legal profession. A plebeian could not possess a fief.[2] Such at least was the original strictness; but as the aristocratic principle grew weaker, an indulgence was extended to heirs, and afterwards to purchasers. They were even permitted to become noble by the acquisition, or at least by its possession for three generations. But notwithstanding this ennobling quality of the land, which seems rather of an equivocal description, it became an established right of the crown to take, every twenty years, and on every change of the vassal, a fine, known by the name of franc-fief, from plebeians in possession of land held by a noble tenure.[3] A gentleman in France or Germany could not exercise any trade without derogating, that is, losing the advantages of his rank. A few exceptions were made, at least in the former country, in favor of some liberal arts and of foreign commerce. But in nothing does the feudal haughtiness of birth more show itself than in the disgrace which attended unequal marriages. No children could inherit a territory held immediately of the empire unless both their parents belonged to the higher class of nobility. In France the offspring of a gentleman by a plebeian mother were reputed noble for the purposes of inheritance, and of exemption from tribute.[4] But they could not be received into any order of chivalry, though capable of simple knighthood; nor were they considered as any better than a bastard class deeply tainted with the alloy of their maternal extraction. Many instances occur where letters of nobility have been granted to reinstate them in their rank. For several purposes it was necessary to prove four, eight, sixteen, or a greater number of quarters

[2] We have no English word that conveys the full sense of *roturier*. How glorious is this deficiency in our political language, and how different are the ideas suggested by *commoner!* Roturier, according to Du Cange, is derived from rupturarius, a peasant, ab agrum rumpendo.

[3] The right, originally perhaps usurpation, called franc-fief, began under Philip the Fair. "Ordonnances des Rois," t. i., p. 324; Denisart, art. "Franc-fief."

[4] Nobility, to a certain degree, was communicated through the mother alone, not only by the custom of Champagne, but in all parts of France; that is, the issue were "gentilhommes du fait de leur corps," and could possess fiefs; but, says Beaumanoir, "la gentilesse par laquelle on devient chevalier doit venir de par le père," c. 45.

—that is, of coats borne by paternal and maternal ancestors; and the same practice still subsists in Germany.

It appears, therefore, that the original nobility of the Continent were what we may call self-created, and did not derive their rank from any such concessions of their respective sovereigns as have been necessary in subsequent ages. In England the baronies by tenure might belong to the same class, if the lands upon which they depended had not been granted by the crown. But the kings of France, before the end of the thirteenth century, began to assume a privilege of creating nobles by their own authority, and without regard to the tenure of land. Philip the Hardy, in 1271, was the first French king who granted letters of nobility; under the reigns of Philip the Fair and his children they gradually became frequent. This effected a change in the character of nobility, and had as obvious a moral, as other events of the same age had a political, influence in diminishing the power and independence of the territorial aristocracy. The privileges originally connected with ancient lineage and extensive domains became common to the low-born creatures of a court, and lost consequently part of their title to respect. The lawyers, as I have observed above, pretended that nobility could not exist without a royal concession. They acquired themselves, in return for their exaltation of prerogative, an official nobility by the exercise of magistracy. The institutions of chivalry again gave rise to a vast increase of gentlemen, knighthood, on whomsoever conferred by the sovereign, being a sufficient passport to noble privileges. It was usual, perhaps, to grant previous letters of nobility to a plebeian for whom the honor of knighthood was designed.

In this noble or gentle class there were several gradations. All those in France who held lands immediately depending upon the crown, whatever titles they might bear, were comprised in the order of Barons. These were originally the peers of the king's court; they possessed the higher territorial jurisdiction, and had the right of carrying their own banner into the field. To these corresponded the Valvassores majores and Capitanei of the Empire. In a subordinate class were the vassals of this high nobility, who, upon the Continent, were usually termed Vavassors—an appellation not unknown, though rare, in England.* The Châtelains

* Chaucer concludes his picturesque description of the Franklin, in the prologue to the "Canterbury Tales," thus:

"Was never such a worthy Vavassor."

This has perplexed some of our commentators, who, not knowing well what was

(Castellani) belonged to the order of Vavassors, as they held only arriere fiefs; but, having fortified houses, from which they derived their name (a distinction very important in those times), and possessing ampler rights of territorial justice, they rose above the level of their fellows in the scale of tenure.[6] But after the personal nobility of chivalry became the object of pride, the Vavassors who obtained knighthood were commonly styled bachelors; those who had not received that honor fell into the class of squires,[7] or Damoiseaux.

§ 4. It will be needless to dwell upon the condition of the inferior clergy, whether secular or professed, as it bears little upon the general scheme of polity. The prelates and abbots, however, it must be understood, were completely feudal nobles. They swore fealty for their lands to the king or other superior, received the homage of their vassals, enjoyed the same immunities, exercised the same jurisdiction, maintained the same authority, as the lay lords among whom they dwelt. Military service does not appear to have been reserved in the beneficiary grants made to cathedrals and monasteries. But when other vassals of the crown were called upon to repay the bounty of their sovereign by personal attendance in war, the ecclesiastical tenants were supposed to fall within the scope of this feudal duty, which men little less uneducated and violent than their compatriots were not reluctant to fulfill. Charlemagne exempted or rather prohibited them from personal service by several capitularies. The practice, however, as every one who has some knowledge of history will be aware, prevailed in succeeding ages. Both in national and private warfare we find

meant by a franklin or by a vavassor, fancied the latter to be of much higher quality than the former. The poet, however, was strictly correct; his acquaintance with French manners showed him that the country squire, for his franklin is no other, precisely corresponded to the vavassor in France.

[6] Whoever had a right to a castle had la haute justice; this being so incident to the castle that it was transferred along with it. There might, however, be a seigneur haut-justicier below the châtelain; and a ridiculous distinction was made as to the number of posts by which their gallows might be supported. A baron's instrument of execution stood on four posts; a châtelain's on three; while the inferior lord who happened to possess la haute justice was forced to hang his subjects on a two-legged machine. "Coûtumes de Poitou; Du Cange, v. Furca."

Laurière quotes from an old manuscript the following short scale of ranks: Duc est la premiére dignité, puis comtes, puis viscomtes, et puis baron, et puis châtelain, et puis vavasseur, et puis citaen, et puis villain.—"Ordonnances des Rois," t. i., p. 277.

[7] The sons of knights, and gentlemen not yet knighted, took the appellation of squires in the twelfth century. That of Damoiseau came into use in the thirteenth. The latter was more usual in France. Squire was not used as a title of distinction in England till the reign of Edward III., and then but sparingly. Though by Henry VI.'s time it was grown more common, yet none assumed it but the sons and heirs of knights and some military men; except officers in courts of justice, who, by patent or prescription, had obtained that addition.

very frequent mention of martial prelates. But, contrary as this actual service might be to the civil as well as ecclesiastical laws, the clergy who held military fiefs were of course bound to fulfill the chief obligation of that tenure and send their vassals into the field. We have many instances of their accompanying the army, though not mixing in the conflict; and even the parish priests headed the militia of their villages. The prelates, however, sometimes contrived to avoid this military service, and the payments introduced in commutation for it, by holding lands in frank-almoigne, a tenure which exempted them from every species of obligation except that of saying masses for the benefit of the grantor's family. But, notwithstanding the warlike disposition of some ecclesiastics, their more usual inability to protect the estates of their churches against rapacious neighbors suggested a new species of feudal relation and tenure. The rich abbeys elected an advocate, whose business it was to defend their interests both in secular courts, and, if necessary, in the field. Pepin and Charlemagne are styled Advocates of the Roman Church. This, indeed, was on a magnificent scale; but in ordinary practice the advocate of a monastery was some neighboring lord, who, in return for his protection, possessed many lucrative privileges, and very frequently considerable estates, by way of fief from his ecclesiastical clients. Some of those advocates are reproached with violating their obligation, and becoming the plunderers of those whom they had been retained to defend.

§ 5. The classes below the gentry may be divided into freemen and villeins. Of the first were the inhabitants of chartered towns, the citizens and burghers, of whom more will be said presently. As to those who dwelt in the country, we can have no difficulty in recognizing, so far as England is concerned, the socagers, whose tenure was free, though not so noble as knight's service, and a numerous body of tenants for term of life, who formed that ancient basis of our strength the English yeomanry. But the mere freemen are not at first sight so distinguishable in other countries. In French records and law-books of feudal times, all besides the gentry are usually confounded under the names of villeins or hommes de pooste (gens potestatis).[8] This proves the slight estimation in which all persons of ignoble birth were considered. For undoubtedly there existed a great many proprietors of land and others, as free, though not as privileged, as the no-

[8] Homo potestatis, non nobilis—Ita nuncupantur, quod in potestate domini sunt—Opponuntur viris nobilibus.—Du Cange, v. "Potestas."

bility. In the south of France, and especially Provence, the number of freemen is remarked to have been greater than in the parts on the right bank of the Loire, where the feudal tenures were almost universal. I shall quote part of a passage in Beaumanoir, which points out this distinction of ranks pretty fully. "It should be known," he says,[9] "that there are three conditions of men in this world; the first is that of gentlemen; and the second is that of such as are naturally free, being born of a free mother. All who have a right to be called gentlemen are free, but all who are free are not gentlemen. Gentility comes by the father, and not by the mother; but freedom is derived from the mother only; and whoever is born of a free mother is himself free, and has free power to do any thing that is lawful."[10]

§ 6. In every age and country, until times comparatively recent, personal servitude appears to have been the lot of a large, perhaps the greater, portion of mankind. We lose a good deal of our sympathy with the spirit of freedom in Greece and Rome, when the importunate recollection occurs to us of the tasks which might be enjoined, and the punishments which might be inflicted, without control either of law or opinion, by the keenest patriot of the Comitia, or the Council of Five Thousand. A similar, though less powerful, feeling will often force itself on the mind when we read the history of the Middle Ages. The Germans, in their primitive settlements, were accustomed to the notion of slavery, incurred not only by captivity, but by crimes, by debt, and especially by loss in gaming. When they invaded the Roman Empire they found the same condition established in all its provinces. Hence, from the beginning of the era now under review, servitude, under somewhat different modes, was extremely common. There is some difficulty in ascertaining its varieties and stages. In the Salic laws, and in the Capitularies, we read not only of Servi, but of Tributarii, Lidi, and Coloni, who were cultivators of the earth, and subject to residence upon their lord's estate, though not destitute of property or civil rights. Those who appertained to the demesne lands of the crown were called Fiscalini. The composition for the murder of one of these was much less than that for a freeman. The number of these servile cultivators was undoubtedly great, yet in those early times, I should conceive, much less than it afterwards became. Property was for the most part in small divisions, and a Frank who could hardly

[9] "Coûtumes de Beauvoisis," c. 45, p. 256.

[10] See NOTE II., "The Tributarii, Lidi, and Coloni."

support his family upon a petty allodial patrimony was not likely to encumber himself with many servants. But the accumulation of overgrown private wealth had a natural tendency to make slavery more frequent. Where the small proprietors lost their lands by mere rapine, we may believe that their liberty was hardly less endangered. Even where this was not the case, yet, as the labor either of artisans or of free husbandmen was but sparingly in demand, they were often compelled to exchange their liberty for bread. In seasons also of famine, and they were not infrequent, many freemen sold themselves to slavery.[11] A capitulary of Charles the Bald in 864 permits their redemption at an equitable price. Others became slaves, as more fortunate men became vassals, to a powerful lord, for the sake of his protection. Many were reduced to this state through inability to pay those pecuniary compositions for offenses which were numerous and sometimes heavy in the barbarian codes of law; and many more by neglect of attendance on military expeditions of the king, the penalty of which was a fine called Heribann, with the alternative of perpetual servitude. A source of loss of liberty, which may strike us as more extraordinary, was superstition; men were infatuated enough to surrender themselves, as well as their properties, to churches and monasteries, in return for such benefits as they might reap by the prayers of their new masters.

The characteristic distinction of a villein was his obligation to remain upon his lord's estate. He was not only precluded from selling the lands upon which he dwelt, but his person was bound, and the lord might reclaim him at any time, by suit in a court of justice, if he ventured to stray. But, equally liable to this confinement, there were two classes

[11] The poor early felt the necessity of selling themselves for subsistence in times of famine. "Subdiderunt se pauperes servitio," says Gregory of Tours, A.D. 585, "ut quantulumcunque de alimento porrigerent." (Lib. vii., c. 45.) This long continued to be the practice; and probably the remarkable number of famines which are recorded, especially in the ninth and eleventh centuries, swelled the sad list of those unhappy poor who were reduced to barter liberty for bread. Mr. Wright, in the "Archæologia," vol. xxx., p. 223, has extracted an entry from an Anglo-Saxon manuscript, where a lady, about the time of the Conquest, manumits some slaves, "whose heads," as it is simply and forcibly expressed, "she had taken for their meat in the evil days." Evil, indeed, were those days in France, when out of seventy-three years, the reigns of Hugh Capet and his two successors, forty-eight were years of famine. Evil were the days for five years from 1015, in the whole Western World, when not a country could be named that was not destitute of bread. These were famines, as Radulfus Glaber and other contemporary writers tell us, in which mothers ate their children, and children their parents; and human flesh was sold, with some pretense of concealment, in the markets. It is probable that England suffered less than France; but so long and frequent a scarcity of necessary food must have affected, in the latter country, the whole organic frame of society.

of villeins, whose condition was exceedingly different. In England, at least from the reign of Henry II., one only, and that the inferior species, existed; incapable of property, and destitute of redress, except against the most outrageous injuries. The lord could seize whatever they acquired or inherited, or convey them, apart from the land, to a stranger. Their tenure bound them to what were called villein services, ignoble in their nature and indeterminate in their degree; the felling of timber, the carrying of manure, the repairing of roads for their lord, who seems to have possessed an equally unbounded right over their labor and its fruits. But by the customs of France and Germany, persons in this abject state seem to have been called serfs, and distinguished from villeins, who were only bound to fixed payments and duties in respect of their lord, though, as it seems, without any legal redress if injured by him. "The third estate of men," says Beaumanoir, in the passage above quoted, "is that of such as are not free; and these are not all of one condition, for some are so subject to their lord that he may take all they have, alive or dead, and imprison them whenever he pleases, being accountable to none but God; while others are treated more gently, from whom the lord can take nothing but customary payments, though at their death all they have escheats to him."

Under every denomination of servitude, the children followed their mother's condition; except in England, where the father's state determined that of the children; on which account bastards of female villeins were born free, the law presuming the liberty of their father. The proportion of freemen, therefore, would have been miserably diminished if there had been no reflux of the tide which ran so strongly towards slavery. But the usage of manumission made a sort of circulation between these two states of mankind. This, as is well known, was an exceedingly common practice with the Romans; and is mentioned, with certain ceremonies prescribed, in the Frankish and other early laws. The clergy, and especially several popes, enforced it as a duty upon laymen; and inveighed against the scandal of keeping Christians in bondage. As society advanced in Europe, the manumission of slaves grew more frequent. By the indulgence of custom in some places, or perhaps by original convention, villeins might possess property, and thus purchase their own redemption. Even where they had no legal title to property, it was accounted inhuman to divest them of their little possession (the peculium of Roman law); nor was their pov-

erty, perhaps, less tolerable, upon the whole, than that of the modern peasantry in most countries of Europe. It was only in respect of his lord, it must be remembered, that the villein, at least in England, was without rights; he might inherit, purchase, sue in the courts of law; though, as defendant in a real action or suit wherein land was claimed, he might shelter himself under the plea of villenage. The peasants of this condition were sometimes made use of in war, and rewarded with enfranchisement; especially in Italy, where the cities and the petty states had often occasion to defend themselves with their own population; and in peace the industry of free laborers must have been found more productive and better directed. Hence the eleventh and twelfth centuries saw the number of slaves in Italy begin to decrease; early in the fifteenth a writer quoted by Muratori speaks of them as no longer existing. The greater part of the peasants in some countries of Germany had acquired their liberty before the end of the thirteenth century; in other parts, as well as in all the northern and eastern regions of Europe, they remained in a sort of villenage till the present age. Some very few instances of predial servitude have been discovered in England so late as the time of Elizabeth, and perhaps they might be traced still lower. Louis Hutin, in France, after innumerable particular instances of manumission had taken place, by a general edict in 1315, reciting that his kingdom is denominated the kingdom of the Franks, that he would have the fact to correspond with the name, emancipates all persons in the royal domains upon paying a just composition, as an example for other lords possessing villeins to follow. Philip the Long renewed the same edict three years afterwards—a proof that it had not been carried into execution.[12]

§ 7. At the final separation of the French from the German side of Charlemagne's empire by the treaty of Verdun in 843, there was perhaps hardly any difference in the constitution of the two kingdoms. If any might have been conjectured to have existed, it would be a greater independence and fuller rights of election in the nobility and people of Germany. But in the lapse of another century France had

[12] Predial servitude was not, however, abolished in all parts of France till the Revolution. Throughout almost the whole jurisdiction of the Parliament of Besançon the peasants were attached to the soil, not being capable of leaving it without the lord's consent; and that in some places he even inherited their goods in exclusion of the kindred. I recollect to have read in some part of Voltaire's correspondence an anecdote of his interference, with that zeal against oppression which is the shining side of his moral character, in behalf of some of these wretched slaves of Franche-comte.

lost all her political unity, and her kings all their authority; while the Germanic empire was entirely unbroken under an effectual, though not absolute, control of its sovereign. No comparison can be made between the power of Charles the Simple and Conrad the First, though the former had the shadow of an hereditary right, and the latter was chosen from among his equals. A long succession of feeble princes or usurpers, and destructive incursions of the Normans, reduced France almost to a dissolution of society; while Germany, under Conrad, Henry, and the Othos, found their arms not less prompt and successful against revolted vassals than external enemies. The high dignitaries were less completely hereditary than they had become in France; they were granted, indeed, pretty regularly, but they were solicited as well as granted; while the chief vassals of the French crown assumed them as patrimonial sovereignties, to which a royal investiture gave more of ornament than sanction. In the eleventh century these imperial prerogatives began to lose part of their lustre. The long struggles of the princes and clergy against Henry IV. and his son, the revival of more effective rights of election on the extinction of the house of Franconia, the exhausting contests of the Swabian emperors in Italy, the intrinsic weakness produced by a law of the empire, according to which the reigning sovereign could not retain an imperial fief more than a year in his hands, gradually prepared that independence of the German aristocracy which reached its height about the middle of the thirteenth century. During this period the French crown had been insensibly gaining strength; and as one monarch degenerated into the mere head of a confederacy, the other acquired unlimited power over a solid kingdom.

It would be tedious, and not very instructive, to follow the details of German public law during the Middle Ages; nor are the more important parts of it easily separable from civil history. In this relation they will find a place in a subsequent chapter of the present work. France demands a more minute attention; and in tracing the character of the feudal system in that country, we shall find ourselves developing the progress of a very different polity.

§ 8. To understand in what degree the peers and barons of France, during the prevalence of feudal principles, were independent of the crown, we must look at their leading privileges. These may be reckoned: I. The right of coining money; II. That of waging private war; III. The exemption from all public tributes, except the feudal aids; IV

The freedom from legislative control; and V. The exclusive exercise of original judicature in their dominions. Privileges so enormous, and so contrary to all principles of sovereignty, might lead us, in strictness, to account France rather a collection of states, partially allied to each other, than a single monarchy.

I. Silver and gold were not very scarce in the first ages of the French monarchy; but they passed more by weight than by tale. A lax and ignorant government, which had not learned the lucrative mysteries of a royal mint, was not particularly solicitous to give its subjects the security of a known stamp in their exchanges. In some cities of France money appears to have been coined by private authority before the time of Charlemagne; at least one of his capitularies forbids the circulation of any that had not been stamped in the royal mint. His successors indulged some of their vassals with the privilege of coining money for the use of their own territories, but not without the royal stamp. About the beginning of the tenth century, however, the lords, among their other assumptions of independence, issued money with no marks but their own. At the accession of Hugh Capet as many as a hundred and fifty are said to have exercised this power. Even under St. Louis it was possessed by about eighty, who, excluding as far as possible the royal coin from circulation, enriched themselves at their subjects' expense by high duties (seigniorages), which they imposed upon every new coinage, as well as by debasing its standard.

Philip the Fair established royal officers of inspection in every private mint. It was asserted in his reign, as a general truth, that no subject might coin silver money. In fact, the adulteration practised in those baronial mints had reduced their pretended silver to a sort of black metal, as it was called (*moneta nigra*), into which little entered but copper. Silver, however, and even gold, were coined by the dukes of Brittany so long as that fief continued to exist. No subjects ever enjoyed the right of coining silver in England without the royal stamp and superintendence[18]—a remarkable proof of the restraint in which the feudal aristocracy was always held in this country.

§ 9.—II. The passion of revenge, always among the most ungovernable in human nature, acts with such violence upon barbarians, that it is utterly beyond the control of their imperfect arrangements of polity. It seems to them no part

[18] I do not extend this to the *fact;* for in the anarchy of Stephen's reign both bishops and barons coined money for themselves.—Hoveden, p. 490.

of the social compact to sacrifice the privilege which nature has placed in the arm of valor. Gradually, however, these fiercer feelings are blunted, and another passion, hardly less powerful than resentment, is brought to play in a contrary direction. The earlier object, accordingly, of jurisprudence is to establish a fixed atonement for injuries, as much for the preservation of tranquillity as the prevention of crime. Such were the weregilds of the barbaric codes, which, for a different purpose, I have already mentioned. But whether it were that the kindred did not always accept, or the criminal offer, the legal composition, or that other causes of quarrel occurred, private feuds (faida) were perpetually breaking out, and many of Charlemagne's capitularies are directed against them. After his time all hope of restraining so inveterate a practice was at an end; and every man who owned a castle to shelter him in case of defeat, and a sufficient number of dependents to take the field, was at liberty to retaliate upon his neighbors whenever he thought himself injured. It must be kept in mind that there was frequently either no jurisdiction to which he could appeal, or no power to enforce its awards; so that we may consider the higher nobility of France as in a state of nature with respect to each other, and entitled to avail themselves of all legitimate grounds of hostility. The right of waging private war was moderated by Louis IX., checked by Philip IV., suppressed by Charles VI.; but a few vestiges of its practice may be found still later.

§ 10.—III. In the modern condition of governments taxation is a chief engine of the well-compacted machinery which regulates the system. But the early European kingdoms knew neither the necessities nor the ingenuity of modern finance. From their demesne lands the kings of France and Lombardy supplied the common expenses of a barbarous court. Even Charlemagne regulated the economy of his farms with the minuteness of a steward, and a large portion of his capitularies are directed to this object. Their actual revenue was chiefly derived from free gifts, made, according to an ancient German custom, at the annual assemblies of the nation, from amercements by allodial proprietors for default of military service, and from the freda, or fines, accruing to the judge out of compositions for murder. These amounted to one-third of the whole weregild; one-third of this was paid over by the count to the royal Exchequer. After the feudal government prevailed in France, and neither the heribannum nor the weregild continued in use,

there seems to have been hardly any source of regular revenue besides the domanial estates of the crown; unless we may reckon as such, that during a journey the king had a prescriptive right to be supplied with necessaries by the towns and abbeys through which he passed; commuted sometimes into petty regular payments, called droits de gist et de chevauché. Hugh Capet was nearly indigent as king of France, though, as count of Paris and Orleans, he might take the feudal aids and reliefs of his vassals. Several other small emoluments of himself and his successors, whatever they may since have been considered, were in that age rather seigniorial than royal. The rights of toll, of customs, of alienage (aubaine), generally even the regale or enjoyment of the temporalities of vacant episcopal sees and other ecclesiastical benefices, were possessed within their own domains by the great feudatories of the crown. They contributed nothing to their sovereign, not even those aids which the feudal customs enjoined.

The history of the royal revenue in France is, however, too important to be slightly passed over. As the necessities of government increased, several devices were tried in order to replenish the Exchequer. One of these was by extorting money from the Jews. It is almost incredible to what a length this was carried. Usury, forbidden by law and superstition to Christians, was confined to this industrious and covetous people. It is now no secret that all regulations interfering with the interest of money render its terms more rigorous and burdensome. The children of Israel grew rich in despite of insult and oppression, and retaliated upon their Christian debtors. If an historian of Philip Augustus may be believed, they possessed almost one-half of Paris. Unquestionably they must have had support both at the court and in the halls of justice. The policy of the kings of France was to employ them as a sponge to suck their subjects' money, which they might afterwards express with less odium than direct taxation would incur. Philip Augustus released all Christians in his dominions from their debts to the Jews, reserving a fifth part to himself. He afterwards expelled the whole nation from France. But they appear to have returned again—whether by stealth, or, as is more probable, by purchasing permission. St. Louis twice banished and twice recalled the Jews. A series of alternate persecution and tolerance was borne by this extraordinary people with an invincible perseverance, and a talent of accumulating riches which kept pace with their plunderers;

till, new schemes of finance supplying the turn, they were finally expelled under Charles VI., and never afterwards obtained any legal establishment in France.

A much more extensive plan of rapine was carried on by lowering the standard of coin. Originally the pound, a money of account, was equivalent to twelve ounces of silver; and divided into twenty pieces of coin (sous), each equal, consequently, to nearly three shillings and four pence of our new English money. At the Revolution the money of France had been depreciated in the proportion of seventy-three to one, and the sol was about equal to an English half-penny. This was the effect of a long continuance of fraudulent and arbitrary government. The abuse began under Philip I. in 1103, who alloyed his silver coin with a third of copper. So good an example was not lost upon subsequent princes; till, under St. Louis, the mark-weight of silver, or eight ounces, was equivalent to fifty sous of the debased coin. Nevertheless these changes seem hitherto to have produced no discontent; whether it were that a people neither commercial nor enlightened did not readily perceive their tendency; or, as has been ingeniously conjectured, that these successive diminutions of the standard were nearly counterbalanced by an augmentation in the value of silver, occasioned by the drain of money during the Crusades, with which they were about contemporaneous. But the rapacity of Philip the Fair kept no measures with the public; and the mark in his reign had become equal to eight livres, or a hundred and sixty sous of money. Dissatisfaction, and even tumults, arose in consequence, and he was compelled to restore the coin to its standard under St. Louis. His successors practised the same arts of enriching their treasury; under Philip of Valois the mark was again worth eight livres. But the film had now dropped from the eyes of the people; and these adulterations of money, rendered more vexatious by continued recoinages of the current pieces, upon which a fee was extorted by the moneyers, showed in their true light as mingled fraud and robbery.

These resources of government, however, by no means superseded the necessity of more direct taxation. The kings of France exacted money from the roturiers, and particularly the inhabitants of towns, within their domains. In this they only acted as proprietors, or suzerains; and the barons took the same course in their own lands. Philip Augustus first ventured upon a stretch of prerogative, which, in the words of his biographer, disturbed all France. He deprived

by force both his own vassals, who had been accustomed to boast of their immunities, and their feudal tenants, of a third part of their goods. Such arbitrary taxation of the nobility, who deemed that their military service discharged them from all pecuniary burdens, France was far too aristocratical a country to bear. It seems not to have been repeated; and his successors generally pursued more legitimate courses. Upon obtaining any contribution, it was usual to grant letters patent, declaring that it had been freely given, and should not be turned into precedent in time to come. But in the reign of Philip the Fair a great innovation took place in the French constitution, which, though it principally affected the method of levying money, may seem to fall more naturally under the next head of consideration.

§ 11.—IV. There is no part of the French feudal policy so remarkable as the entire absence of all supreme legislation. We find it difficult to conceive the existence of a political society, nominally one kingdom and under one head, in which, for more than three hundred years, there was wanting the most essential attributes of government. It will be requisite, however, to take this up a little higher, and inquire what was the original legislature of the French monarchy.

Arbitrary rule, at least in theory, was uncongenial to the character of the Northern nations. Neither the power of making laws, nor that of applying them to the circumstances of particular cases, was left at the discretion of the sovereign. The Lombard kings held assemblies every year at Pavia, where the chief officers of the crown and proprietors of lands deliberated upon all legislative measures, in the presence, and, nominally at least, with the consent, of the multitude. Frequent mention is made of similar public meetings in France by the historians of the Merovingian kings, and still more unequivocally by their statutes. These assemblies have been called Parliaments of the Champ de Mars, having originally been held in the month of March. But they are supposed by many to have gone much into disuse under the later Merovingian kings. That of 615, the most important of which any traces remain, was at the close of the great revolution which punished Brunehaut for aspiring to despotic power. Whether these assemblies were composed of any except prelates, great land-holders, or what we may call nobles, and the Antrustions of the king, is still an unsettled point. It is probable, however, not only that the bishops took part in them, but also that the presence of the nation was traditionally required in conformity to the an-

cient German usage, which had not been formally abolished; while the difficulty of prevailing on a dispersed people to meet every year, as well as the enhanced influence of the king through his armed Antrustions, soon reduced the freemen to little more than spectators from the neighboring districts.

Although no legislative proceedings of the Merovingian line are extant after 615, it is intimated by early writers that Pepin Heristal and his son Charles Martel restored the national council after some interruption; and if the language of certain historians be correct, they rendered it considerably popular.

Pepin the younger, after his accession to the throne, changed the month of this annual assembly from March to May; and we have some traces of what took place at eight sessions during his reign. Of his capitularies, however, one only is said to be made *in generali populi conventu;* the rest are enacted in synods of bishops, and all without exception relate merely to ecclesiastical affairs. And it must be owned that, as in those of the first dynasty, we find generally mention of the optimates who met in these conventions, but rarely any word that can be construed of ordinary freemen.

Such, indeed, is the impression conveyed by a remarkable passage of Hincmar, archbishop of Rheims during the time of Charles the Bald, who has preserved, on the authority of a writer contemporary with Charlemagne, a sketch of the Frankish government under that great prince. Two assemblies (placita) were annually held. In the first, all regulations of importance to the public weal for the ensuing year were enacted; and to this, he says, the whole body of clergy and laity repaired; the greater, to deliberate upon what was fitting to be done; and the lesser, to confirm by their voluntary assent, not through deference to power, or sometimes even to discuss, the resolutions of their superiors. In the second annual assembly, the chief men and officers of state were alone admitted, to consult upon the most urgent affairs of government. They debated, in each of these, upon certain capitularies, or short proposals, laid before them by the king. The clergy and nobles met in separate chambers, though sometimes united for the purposes of deliberation. In these assemblies, principally, I presume, in the more numerous of the two annually summoned, that extensive body of laws, the capitularies of Charlemagne, were enacted. And though it would contradict the testimony just adduced from Hincmar to suppose that the lesser freeholders took a very ef-

fective share in public counsels, yet their presence, and the usage of requiring their assent, indicate the liberal principles upon which the system of Charlemagne was founded. It is continually expressed in his capitularies and those of his family that they were enacted by general consent. In one of Louis the Debonair we even trace the first germ of representative legislation. Every count is directed to bring with him to the general assembly twelve Scabini, if there should be so many in his county; or, if not, should fill up the number out of the most respectable persons resident. These Scabini were judicial assessors of the count, chosen by the allodial proprietors, in the county court, or mallus, though generally on his nomination.[14]

The circumstances, however, of the French Empire for several subsequent ages were exceedingly adverse to such enlarged schemes of polity. The nobles contemned the imbecile descendants of Charlemagne; and the people, or lesser freeholders, if they escaped absolute villenage, lost their immediate relation to the supreme government in the subordination to their lord established by the feudal law. Yet we may trace the shadow of ancient popular rights in one constitutional function of high importance, the choice of a sovereign. Historians who relate the election of an emperor or king of France seldom omit to specify the consent of the multitude, as well as of the temporal and spiritual aristocracy; and even in solemn instruments that record such transactions we find a sort of importance attached to the popular suffrage. It is surely less probable that a recognition of this elective right should have been introduced as a mere ceremony, than that the form should have survived after length of time and revolutions of government had almost obliterated the recollection of its meaning.

It must, however, be impossible to ascertain even the theoretical privileges of the subjects of Charlemagne, much more to decide how far they were substantial or illusory. We can only assert, in general, that there continued to be some mixture of democracy in the French constitution during the reigns of Charlemagne and his first successors. The primeval German institutions were not eradicated. In the capitularies the consent of the people is frequently expressed.

[14] The Scabini are not to be confounded, as sometimes has been the case, with the Rachimburgii, who were not chosen by the allodial proprietors, but were themselves such, or sometimes, perhaps, beneficiaries, summoned by the court as jurors were in England. They answered to the *prud'hommes*, *boni homines*, of later times: they formed the county or the hundred court, for the determination of civil and criminal causes.

Fifty years after Charlemagne, his grandson Charles the Bald succinctly expresses the theory of legislative power. A law, he says, is made by the people's consent and the king's enactment. It would hardly be warranted by analogy or precedent to interpret the word people so very narrowly as to exclude any allodial proprietors, among whom, however unequal in opulence, no legal inequality of rank is supposed to have yet arisen.

§ 12. But by whatever authority laws were enacted, whoever were the constituent members of national assemblies, they ceased to be held in about seventy years from the death of Charlemagne. The latest capitularies are of Carloman in 882. From this time there ensues a long blank in the history of French legislation. The kingdom was as a great fief, or rather as a bundle of fiefs, and the king little more than one of a number of feudal nobles, differing rather in dignity than in power from some of the rest. The royal council was composed only of barons, or tenants in chief, prelates, and household officers. These now probably deliberated in private, as we hear no more of the consenting multitude. Political functions were not in that age so clearly separated as we are taught to fancy they should be; this council advised the king in matters of government, confirmed and consented to his grants, and judged in all civil and criminal cases where any peers of their court were concerned.

But, notwithstanding the want of any permanent legislation during so long a period, instances occur in which the kings of France appear to have acted with the concurrence of an assembly more numerous and more particularly summoned than the royal council. At such a congress held in 1146 the crusade of Louis VII. was undertaken. We find also an ordinance of the same prince in some collections, reciting that he had convoked a general assembly at Soissons, where many prelates and barons then present had consented and requested that private wars might cease for the term of ten years. The famous Saladine tithe was imposed upon lay as well as ecclesiastical revenues by a similar convention in 1188. And when Innocent IV., during his contest with the Emperor Frederick, requested an asylum in France, St. Louis, though much inclined to favor him, ventured only to give a conditional permission, provided it were agreeable to his barons, whom, he said, a king of France was bound to consult in such circumstances. Accordingly he assembled the French barons, who unanimously refused their consent.

It was the ancient custom of the kings of France as well

as of England, and indeed of all those vassals who affected a kind of sovereignty, to hold general meetings of their barons, called *Cours Plénières*, or *Parliaments*, at the great festivals of the year. These assemblies were principally intended to make a display of magnificence, and to keep the feudal tenants in good-humor; nor is it easy to discover that they passed in any thing but pageantry. Some respectable antiquaries have, however, been of opinion that affairs of state were occasionally discussed in them; and this is certainly by no means inconsistent with probability, though not sufficiently established by evidence.

Excepting a few instances, most of which have been mentioned, it does not appear that the kings of the house of Capet acted according to the advice and deliberation of any national assembly, such as assisted the Norman sovereigns of England; nor was any consent required for the validity of their edicts, except that of the ordinary council, chiefly formed of their household officers and less powerful vassals. This is at first sight very remarkable. For there can be no doubt that the government of Henry I. or Henry II. was incomparably stronger than that of Louis VI. or Louis VII. But this apparent absoluteness of the latter was the result of their real weakness and the disorganization of the monarchy. The peers of France were infrequent in their attendance upon the king's council, because they denied its coercive authority. It was a fundamental principle that every feudal tenant was so far sovereign within the limits of his fief, that he could not be bound by any law without his consent. The king, says St. Louis in his Establishments, can not make proclamation, that is, declare any new law, in the territory of a baron, without his consent, nor can the baron do so in that of a vavassor. Thus, if legislative power be essential to sovereignty, we can not in strictness assert the King of France to have been sovereign beyond the extent of his domanial territory. Nothing can more strikingly illustrate the dissimilitude of the French and English constitutions of government than the sentence above cited from the code of St. Louis.

§ 13. Upon occasions when the necessity of common deliberation, or of giving to new provisions more extensive scope than the limits of a single fief, was too glaring to be overlooked, congresses of neighboring lords met in order to agree upon resolutions which each of them undertook to execute within his own domains. The king was sometimes a contracting party, but without any coercive authority over

the rest. Thus we have what is called an ordinance, but, in reality, an agreement, between the king (Philip Augustus), the Countess of Troyes or Champagne, and the Lord of Dampierre, relating to the Jews in their domains; which agreement or ordinance, it is said, should endure "until ourselves, and the Countess of Troyes, and Guy de Dampierre, who make this contract, shall dissolve it with the consent of such of our barons as we shall summon for that purpose."

Ecclesiastical councils were another substitute for a regular legislature; and this defect in the political constitution rendered their encroachments less obnoxious, and almost unavoidable. That of Troyes in 878, composed perhaps in part of laymen, imposed a fine upon the invaders of church property. And the Council of Toulouse, in 1229, prohibited the erection of any new fortresses, or the entering into any leagues, except against the enemies of religion; and ordained that judges should administer justice gratuitously, and publish the decrees of the council four times in the year.

§ 14. The original exemption of the vassals of the crown from legislative control remained unimpaired at the date of the Establishments of St. Louis, about 1269; and their ill-judged confidence in this feudal privilege still led them to absent themselves from the royal council. It seems impossible to doubt that the barons of France might have asserted the same right which those of England had obtained, that of being duly summoned by special writ, and thus have rendered their consent necessary to every measure of legislation. But the nobility did not long continue safe in their immunity from the king's legislative power.

The ultimate source of this increased authority will be found in the commanding attitude assumed by the kings of France from the reign of Philip Augustus, and particularly in the annexation of the two great fiefs of Normandy and Toulouse. St. Louis, in his scrupulous moderation, forbore to avail himself of all the advantages presented by the circumstances of his reign; and his Establishments bear testimony to a state of political society which, even at the moment of their promulgation, was passing away. The next thirty years after his death, with no marked crisis, and with little disturbance, silently demolished the feudal system, such as had been established in France during the dark confusion of the tenth century. Philip the Fair, by help of his lawyers and his financiers, found himself, at the beginning of the fourteenth century, the real master of his subjects.

§ 15. There was, however, one essential privilege which he

could not hope to overturn by force—the immunity from taxation enjoyed by his barons. This, it will be remembered, embraced the whole extent of their fiefs, and their tenantry of every description—the king having no more right to impose a tallage upon the demesne towns of his vassals than upon themselves. Thus his resources, in point of taxation, were limited to his own domains; including certainly, under Philip the Fair, many of the noblest cities in France, but by no means sufficient to meet his increasing necessities. We have seen already the expedients employed by this rapacious monarch—a shameless depreciation of the coin, and, what was much more justifiable, the levying taxes within the territories of his vassals by their consent. Of these measures, the first was odious, the second slow and imperfect. Confiding in his sovereign authority—though recently, yet almost completely, established—and little apprehensive of the feudal principles, already grown obsolete and discountenanced, he was bold enough to make an extraordinary innovation in the French constitution. This was the convocation of the States-General, a representative body, composed of the three orders of the nation. They were first convened in 1302, in order to give more weight to the king's cause in his great quarrel with Boniface VIII.; but their earliest grant of a subsidy is in 1314. Thus the nobility surrendered to the crown their last privilege of territorial independence; and, having first submitted to its appellant jurisdiction over their tribunals, next to its legislative supremacy, now suffered their own dependents to become, as it were, immediate, and a third estate to rise up almost coordinate with themselves, endowed with new franchises, and bearing a new relation to the monarchy.

It is impossible not to perceive the motives of Philip in embodying the deputies of towns as a separate estate in the national representation. He might, no question, have convoked a parliament of his barons, and obtained a pecuniary contribution, which they would have levied upon their burgesses and other tenants. But, besides the ulterior policy of diminishing the control of the barons over their dependents, he had good reason to expect more liberal aid from the immediate representatives of the people than through the concession of a dissatisfied aristocracy.

§ 16. It is very difficult to ascertain the constitutional rights of the States-General, claimed or admitted, during forty years after their first convocation; but if, indeed, we could implicitly confide in an historian of the sixteenth cen-

tury, who asserts that Louis Hutin bound himself and his successors not to levy any tax without the consent of the three estates, the problem would find its solution. This ample charter does not appear in the French archives; and, though by no means to be rejected on that account, when we consider the strong motives for its destruction, can not fairly be adduced as an authentic fact. Nor can we altogether infer, perhaps, from the collection of ordinances, that the crown had ever intentionally divested itself of the right to impose tallages on its domanial tenants. All others, however, were certainly exempted from that prerogative; and there seems to have been a general sentiment that no tax whatever could be levied without free consent of the estates. Louis Hutin, in a charter granted to the nobles and burgesses of Picardy, promises to abolish the unjust taxes (maltotes) imposed by his father; and in another instrument, called the charter of Normandy, declares that he renounces for himself and his successors all undue tallages and exactions, except in case of evident utility. This exception is doubtless of perilous ambiguity; yet, as the charter was literally wrested from the king by an insurrectionary league, it might be expected that the same spirit would rebel against his royal interpretation of state necessity. His successor, Philip the Long, tried the experiment of a gabelle, or excise upon salt. But it produced so much discontent that he was compelled to assemble the States-General, and to publish an ordinance declaring that the impost was not designed to be perpetual, and that, if a sufficient supply for the existing war could be found elsewhere, it should instantly determine. Whether this was done I do not discover; nor do I conceive that any of the sons of Philip the Fair, inheriting much of his rapacity and ambition, abstained from extorting money without consent. Philip of Valois renewed and augmented the duties on salt by his own prerogative, nor had the abuse of debasing the current coin been ever carried to such a height as during his reign and the first years of his successor. These exactions, aggravated by the smart of a hostile invasion, produced a very remarkable concussion in the government of France.

§ 17. I have been obliged to advert, in another place, to the memorable resistance made by the States-General of 1355 and 1356 to the royal authority, on account of its inseparable connection with the civil history of France.[15] In the present chapter the assumption of political influence by

[15] Chap. I., p. 47.

those assemblies deserves particular notice. Not that they pretended to restore the ancient constitution of the Northern nations, still flourishing in Spain and England, the participation of legislative power with the crown. Five hundred years of anarchy and ignorance had swept away all remembrance of those general diets in which the capitularies of the Carlovingian dynasty had been established by common consent. Charlemagne himself was hardly known to the French of the fourteenth century, except as the hero of some silly romance or ballad. The States-General remonstrated, indeed, against abuses, and especially the most flagrant of all, the adulteration of money; but the ordinance granting redress emanated altogether from the king, and without the least reference to their consent, which sometimes appears to be studiously omitted. But the privilege upon which the States under John solely relied for securing the redress of grievances was that of granting money, and of regulating its collection. The latter, indeed, though for convenience it may be devolved upon the executive government, appears to be incident to every assembly in which the right of taxation resides. That, accordingly, which met in 1355 nominated a committee chosen out of the three orders, which was to sit after their separation, and which the king bound himself to consult, not only as to the internal arrangements of his administration, but upon every proposition of peace or armistice with England. Deputies were dispatched into each district to superintend the collection and receive the produce of the subsidy granted by the States. These assumptions of power would not long, we may be certain, have left the sole authority of legislation in the king, and might, perhaps, be censured as usurpation, if the peculiar emergency in which France was then placed did not furnish their defense.

§ 18. But whatever opportunity might now be afforded for establishing a just and free constitution in France was entirely lost. Charles, inexperienced and surrounded by evil counsellors, thought the States-General inclined to encroach upon his rights, of which, in the best part of his life, he was always abundantly careful. He dismissed, therefore, the assembly, and had recourse to the easy but ruinous expedient of debasing the coin. This led to seditions at Paris, by which his authority, and even his life, were endangered. In February, 1357, three months after the last meeting had been dissolved, he was obliged to convoke the States again, and to enact an ordinance conformable to the petitions ten-

dered by the former assembly. This contained many excellent provisions, both for the redress of abuses and the vigorous prosecution of the war against Edward; and it is difficult to conceive that men who advised measures so conducive to the public weal could have been the blind instruments of the King of Navarre. But this is a problem in history that we can not hope to resolve. It appears, however, that in a few weeks after the promulgation of this ordinance the proceedings of the reformers fell into discredit, and their commission of thirty-six, to whom the collection of the new subsidy, the redress of grievances, and, in fact, the whole administration of government, had been intrusted, became unpopular. The subsidy produced much less than they had led the people to expect: briefly, the usual consequence of democratical emotions in a monarchy took place. Disappointed by the failure of hopes unreasonably entertained and improvidently encouraged, and disgusted by the excesses of the violent demagogues, the nation, especially its privileged classes, who seem to have concurred in the original proceedings of the States-General, attached themselves to the party of Charles, and enabled him to quell opposition by force. Marcel, provost of the traders, a municipal magistrate of Paris, detected in the overt execution of a traitorous conspiracy with the King of Navarre, was put to death by a private hand. Whatever there had been of real patriotism in the States-General, artfully confounded, according to the practice of courts, with these schemes of disaffected men, shared in the common obloquy; whatever substantial reforms had been projected the government threw aside as seditious innovations. Charles, who had assumed the title of regent, found in the States-General, assembled at Paris in 1359, a very different disposition from that which their predecessors had displayed, and publicly restored all counsellors whom in the former troubles he had been compelled to discard. Thus the monarchy resettled itself on its ancient basis, or, more properly, acquired additional stability.

§ 19. Both John, after the peace of Bretigni, and Charles V. imposed taxes without consent of the States-General. The latter, indeed, hardly ever convoked that assembly. Upon his death the contention between the crown and representative body was renewed; and, in the first meeting held after the accession of Charles VI., the government was compelled to revoke all taxes illegally imposed since the reign of Philip IV. This is the most remedial ordinance, perhaps, in the history of French legislation. "We will, or

dain, and grant," says the king, "that the aids, subsidies, and impositions, of whatever kind, and however imposed, that have had course in the realm since the reign of our predecessor, Philip the Fair, shall be repealed and abolished; and we will and decree that, by the course which the said impositions have had, we or our successors shall not have acquired any right, nor shall any prejudice be wrought to our people, nor to their privileges and liberties, which shall be re-established in as full a manner as they enjoyed them in the reign of Philip the Fair, or at any time since; and we will and decree that, if any thing has been done contrary to them since that time to the present hour, neither we nor our successors shall take any advantage therefrom." If circumstances had turned out favorably for the cause of liberty, this ordinance might have been the basis of a free constitution, in respect, at least, of immunity from arbitrary taxation. But the coercive measures of the court and tumultuous spirit of the Parisians produced an open quarrel, in which the popular party met with a decisive failure.

It seems, indeed, impossible that a number of deputies, elected merely for the purpose of granting money, can possess that weight or be invested in the eyes of their constituents with that awfulness of station which is required to withstand the royal authority. The States-General had no right of redressing abuses, except by petition—no share in the exercise of sovereignty, which is inseparable from the legislative power. Hence, even in their proper department of imposing taxes, they were supposed incapable of binding their constituents without their special assent. Whether it were the timidity of the deputies, or false notions of freedom, which produced this doctrine, it was evidently repugnant to the stability and dignity of a representative assembly. Nor was it less ruinous in practice than mistaken in theory. For as the necessary subsidies, after being provisionally granted by the States, were often rejected by their electors, the king found a reasonable pretense for dispensing with the concurrence of his subjects when he levied contributions upon them.

The States-General were convoked but rarely under Charles VI. and VII., both of whom levied money without their concurrence. Yet there are remarkable testimonies under the latter of these princes that the sanction of national representatives was still esteemed strictly requisite to any ordinance imposing a general tax, however the emergency of circumstances might excuse a more arbitrary procedure.

Thus Charles VII., in 1436, declares that he has set up again the aids which had been previously abolished *by the consent of the three estates.* And in the important edict establishing the companies of ordonnance, which is recited to be done by the advice and counsel of the States-General assembled at Orleans, the forty-first section appears to bear a necessary construction that no tallage could lawfully be imposed without such consent. It is maintained, indeed, by some writers, that the perpetual taille established about the same time was actually granted by these States of 1439, though it does not so appear upon the face of any ordinance. And certainly this is consonant to the real and recognized constitution of that age.

But the crafty advisers of courts in the fifteenth century, enlightened by experience of past dangers, were averse to encountering these great political masses, from which there were, even in peaceful times, some disquieting interferences, some testimonies of public spirit, and recollections of liberty to apprehend. The kings of France, indeed, had a resource, which generally enabled them to avoid a convocation of the States-General, without violating the national franchises. From provincial assemblies, composed of the three orders, they usually obtained more money than they could have extracted from the common representatives of the nation, and heard less of remonstrance and demand. Languedoc, in particular, had her own assembly of states, and was rarely called upon to send deputies to the general body, or representatives of what was called the Languedoil. But Auvergne, Normandy, and other provinces belonging to the latter division, had frequent convocations of their respective estates during the intervals of the States-General—intervals which by this means were protracted far beyond that duration to which the exigencies of the crown would otherwise have confined them. This was one of the essential differences between the constitutions of France and England, and arose out of the original disease of the former monarchy—the distraction and want of unity consequent upon the decline of Charlemagne's family, which separated the different provinces, in respect of their interests and domestic government, from each other.

§ 20. But the formality of consent, whether by general or provincial states, now ceased to be reckoned indispensable. The lawyers had rarely seconded any efforts to restrain arbitrary power: in their hatred of feudal principles, especially those of territorial jurisdiction, every generous sentiment of

freedom was proscribed; or, if they admitted that absolute prerogative might require some checks, it was such only as themselves, not the national representatives, should impose. Charles VII. levied money by his own authority. Louis XI. carried this encroachment to the highest pitch of exaction. It was the boast of courtiers that he first released the kings of France from dependence (*hors de page*); or, in other words, that he effectually demolished those barriers which, however imperfect and ill-placed, had imposed some impediment to the establishment of despotism.

§ 21. The States-General met but twice during the reign of Louis XI., and on neither occasion for the purpose of granting money. But an assembly in the first year of Charles VIII., the States of Tours in 1484, is too important to be overlooked, as it marks the last struggle of the French nation by its legal representatives for immunity from arbitrary taxation.

A warm contention arose for the regency upon the accession of Charles VIII., between his aunt, Anne de Beaujeu, whom the late king had appointed by testament, and the princes of the blood, at the head of whom stood the Duke of Orleans, afterwards Louis XII. The latter combined to demand a convocation of the States-General, which accordingly took place. The king's minority and the factions at court seemed no unfavorable omens for liberty. But a scheme was artfully contrived which had the most direct tendency to break the force of a popular assembly. The deputies were classed in six nations, who debated in separate chambers, and consulted each other only upon the result of their respective deliberations. It was easy for the court to foment the jealousies natural to such a partition. Two nations, the Norman and Burgundian, asserted that the right of providing for the regency devolved, in the king's minority, upon the States-General; a claim of great boldness, and certainly not much founded upon precedents. In virtue of this, they proposed to form a council not only of the princes, but of certain deputies to be elected by the six nations who composed the States. But the other four, those of Paris, Aquitaine, Languedoc, and Languedoil (which last comprised the central provinces), rejected this plan, from which the two former ultimately desisted, and the choice of councillors was left to the princes.

A firmer and more unanimous spirit was displayed upon the subject of public reformation. The tyranny of Louis XI. had been so unbounded, that all ranks agreed in calling

for redress, and the new governors were desirous, at least by punishing his favorites, to show their inclination towards a change of system. They were very far, however, from approving the propositions of the States-General. These went to points which no court can bear to feel touched, though there is seldom any other mode of redressing public abuses; the profuse expense of the royal household, the number of pensions and improvident grants, the excessive establishment of troops. The States explicitly demanded that the taille and all other arbitrary imposts should be abolished, and that from thenceforward, "according to the natural liberty of France," no tax should be levied in the kingdom without the consent of the States. It was with great difficulty, and through the skillful management of the court, that they consented to the collection of the taxes payable in the time of Charles VII., with the addition of one-fourth as a gift to the king upon his accession. This subsidy they declare to be granted "by way of gift and concession, and not otherwise, and so as no one should from thenceforward call it a tax, but a gift and concession." And this was only to be in force for two years, after which they stipulated that another meeting should be convoked. But it was little likely that the government would encounter such a risk; and the princes, whose factious views the States had by no means seconded, felt no temptation to urge again their convocation. No assembly in the annals of France seems, notwithstanding some party selfishness arising out of the division into nations, to have conducted itself with so much public spirit and moderation; nor had that country, perhaps, ever so fair a prospect of establishing a legitimate constitution.

§ 22.—V. The right of jurisdiction has undergone changes in France and in the adjacent countries still more remarkable than those of the legislative power; and passed through three very distinct stages, as the popular, aristocratic, or regal influence predominated in the political system. The Franks, Lombards, and Saxons seem alike to have been jealous of judicial authority, and averse to surrendering what concerned every man's private right out of the hands of his neighbors and his equals. Every ten families are supposed to have had a magistrate of their own election; the tithingman of England, the Decanus of France and Lombardy. Next in order was the Centenarius or Hundredary, whose name expresses the extent of his jurisdiction, and who, like the decanus, was chosen by those subject to it. But the authority of these petty magistrates was gradually confined

to the less important subjects of legal inquiry. No man, by a capitulary of Charlemagne, could be impleaded for his life, or liberty, or lands, or servants in the hundred court. In such weighty matters, or by way of appeal from the lower jurisdictions, the count of the district was judge. He, indeed, was appointed by the sovereign; but his power was checked by assessors, called Scabini, who held their office by the election, or at least the concurrence, of the people. An ultimate appeal seems to have lain to the Count Palatine, an officer of the royal household; and sometimes causes were decided by the sovereign himself. Such was the original model of judicature; but as complaints of injustice and neglect were frequently made against the counts, Charlemagne, desirous on every account to control them, appointed special judges, called Missi Regii, who held assizes from place to place, inquired into abuses and maladministration of justice, enforced its execution, and expelled inferior judges from their offices for misconduct.

§ 23. This judicial system was gradually superseded by one founded upon totally opposite principles, those of feudal privilege, which led to *territorial jurisdiction.* An allodial freeholder could own no jurisdiction but that of the king. It was the general prevalence of sub-infeudation which gave importance to the territorial jurisdictions of the nobility. For now the military tenants, instead of repairing to the county court, sought justice in that of their immediate lord; or rather the count himself, become the suzerain instead of the governor of his district, altered the form of his tribunal upon the feudal model. A system of procedure so congenial to the spirit of the age spread universally over France and Germany. The tribunals of the king were forgotten like his laws; the one retaining as little authority to correct, as the other to regulate, the decisions of a territorial judge. The rules of evidence were superseded by that monstrous birth of ferocity and superstition, the judicial combat, and the maxims of law reduced to a few capricious customs, which varied in almost every barony.

These rights of administering justice were possessed by the owners of fiefs in very different degrees; and, in France, were divided into the high, the middle, and the low jurisdiction. The first species alone (*la haute justice*) conveyed the power of life and death; it was inherent in the baron and the châtelain, and sometimes enjoyed by the simple vavassor. The lower jurisdictions were not competent to judge in capital cases, and consequently forced to send such crim-

inals to the court of the superior. But in some places a thief taken in the fact might be punished with death by a lord who had only the low jurisdiction. In England this privilege was known by the uncouth terms of Infangthef and Outfangthef. The high jurisdiction, however, was not very common in this country, except in the chartered towns.

Several customs rendered these rights of jurisdiction far less instrumental to tyranny than we might infer from their extent. While the counts were yet officers of the crown, they frequently appointed a deputy, or viscount, to administer justice. Ecclesiastical lords, who were prohibited by the canons from inflicting capital punishment, and supposed to be unacquainted with the law followed in civil courts, or unable to enforce it, had an officer by name of advocate, or vidame, whose tenure was often feudal and hereditary. The viguiers (vicarii), bailiffs, provosts, and seneschals of lay lords were similar ministers, though not in general of so permanent a right in their offices, or of such eminent station, as the advocates of monasteries. It seems to have been an established maxim, at least in later times, that the lord could not sit personally in judgment, but must intrust that function to his bailiff and vassals. According to the feudal rules, the lord's vassals or peers of his court were to assist at all its proceedings. And indeed the presence of these assessors was so essential to all territorial jurisdiction, that no lord, to whatever rights of justice his fief might entitle him, was qualified to exercise them, unless he had at least two vassals to sit as peers in his court.

§ 24. These courts of a feudal barony or manor required neither the knowledge of positive law nor the dictates of natural sagacity. In all doubtful cases, and especially where a crime not capable of notorious proof was charged, the combat was awarded; and God, as they deemed, was the judge.[10] The nobleman fought on horseback, with all his arms of attack and defense; the plebeian on foot, with his club and target. The same were the weapons of the champions to whom women and ecclesiastics were permitted to intrust their rights. If the combat was intended to ascertain a civil right, the vanquished party of course forfeited his claim and paid a fine. If he fought by proxy, the champion was liable to have his hand struck off; a regulation necessary, perhaps, to obviate the corruption of these hired defenders. In

[10] Trial by combat does not seem to have established itself completely in France till ordeals went into disuse, which Charlemagne rather encouraged, and which, in his age, the clergy for the most part approved.

criminal cases the appellant suffered, in the event of defeat, the same punishment which the law awarded to the offense of which he accused his adversary. Even where the cause was more peaceably tried, and brought to a regular adjudication by the court, an appeal for false judgment might, indeed, be made to the suzerain, but it could only be tried by battle. And in this the appellant, if he would impeach the concurrent judgment of the court below, was compelled to meet successively in combat every one of its members; unless he should vanquish them all within the day, his life, if he escaped from so many hazards, was forfeited to the law. If fortune or miracle should make him conqueror in every contest, the judges were equally subject to death, and their court forfeited their jurisdiction forever. A less perilous mode of appeal was to call the first judge who pronounced a hostile sentence into the field. If the appellant came off victorious in this challenge, the decision was reversed, but the court was not impeached. But for denial of justice, that is, for a refusal to try his suit, the plaintiff repaired to the court of the next superior lord, and supported his appeal by testimony. Yet even here the witnesses might be defied, and the pure stream of justice turned at once into the torrent of barbarous contest.

§ 25. Such was the judicial system of France when St. Louis enacted that great code which bears the name of his Establishments. The rules of civil and criminal procedure, as well as the principles of legal decisions, are there laid down with much detail. But that incomparable prince, unable to overthrow the judicial combat, confined himself to discourage it by the example of a wiser jurisprudence. It was abolished throughout the royal domains. The bailiffs and seneschals who rendered justice to the king's immediate subjects were bound to follow his own laws. He not only received appeals from their sentences in his own court of peers, but listened to all complaints with a kind of patriarchal simplicity. "Many times," says Joinville, "I have seen the good saint, after hearing mass, in the summer season, lay himself at the foot of an oak in the wood of Vincennes, and make us all sit round him; when those who would, came and spake to him without let of any officer, and he would ask aloud if there were any present who had suits; and when they appeared, would bid two of his bailiffs determine their cause upon the spot."

The influence of this new jurisprudence established by St. Louis, combined with the great enhancements of the royal

prerogatives in every other respect, produced a rapid change in the legal administration of France. It was, in all civil suits, at the discretion of the litigant parties to adopt the law of the Establishments, instead of resorting to combat. As gentler manners prevailed, especially among those who did not make arms their profession, the wisdom and equity of the new code was naturally preferred. The superstition which had originally led to the latter lost its weight through experience and the uniform opposition of the clergy. The same superiority of just and settled rules over fortune and violence, which had forwarded the encroachments of the ecclesiastical courts, was now manifested in those of the king.

§ 26. Philip Augustus, by a famous ordinance in 1190, first established royal courts of justice, held by the officers called bailiffs or seneschals, who acted as the king's lieutenants in his domains. Every barony, as it became reunited to the crown, was subjected to the jurisdiction of one of these officers, and took the name of a bailliage or seneschaussée; the former name prevailing most in the northern, the latter in the southern, provinces. The vassals whose lands depended upon, or, in feudal language, moved, from the superiority of this fief, were obliged to submit to the ressort or supreme appellant jurisdiction of the royal court established in it. This began rapidly to encroach upon the feudal rights of justice. In a variety of cases, termed royal, the territorial court was pronounced incompetent; they were reserved for the judges of the crown; and in every case, unless the defendant excepted to the jurisdiction, the royal court might take cognizance of a suit, and decide it in exclusion of the feudal judicature. The nature of cases reserved under the name of royal was kept in studied ambiguity, under cover of which the judges of the crown perpetually strove to multiply them. Vassals were permitted to complain, in the first instance, to the king's court, of injuries committed by their lords. These rapid and violent encroachments left the nobility no alternative but armed combinations to support their remonstrances. Philip the Fair bequeathed to his successor the task of appeasing the storm which his own administration had excited. Leagues were formed in most of the northern provinces for the redress of grievances, in which the third estate, oppressed by taxation, united with the vassals, whose feudal privileges had been infringed. Separate charters were granted to each of these confederacies by Louis Hutin, which contain many remedial provisions against the grosser violations of ancient rights, though the crown per-

sisted in restraining territorial jurisdictions. Appeals became more common for false judgment, as well as denial of right; and in neither was the combat permitted. It was still, however, preserved in accusations of heinous crimes, unsupported by any testimony but that of the prosecutor, and was never abolished by any positive law, either in France or England. But instances of its occurrence are not frequent even in the fourteenth century.

§ 27. The supreme council, or court of peers, to whose deliberative functions I have already adverted, was also the great judicial tribunal of the French crown from the accession of Hugh Capet. By this alone the barons of France, or tenants-in-chief of the king, could be judged. To this court appeals for denials of justice were referred. It was originally composed, as has been observed, of the feudal vassals, coequals of those who were to be tried by it; and also of the household officers, whose right of concurrence, however anomalous, was extremely ancient. But after the business of the court came to increase through the multiplicity of appeals, especially from the bailiffs established by Philip Augustus in the royal domains, the barons found neither leisure nor capacity for the ordinary administration of justice, and reserved their attendance for occasions where some of their own orders were implicated in a criminal process. St. Louis, anxious for regularity and enlightened decisions, made a considerable alteration by introducing some councillors of inferior rank, chiefly ecclesiastics, as advisers of the court, though, as is supposed, without any decisive suffrage. The court now became known by the name of Parliament. Registers of its proceedings were kept, of which the earliest extant are of the year 1254. It was still, perhaps, in some degree ambulatory; but by far the greater part of its sessions in the thirteenth century were at Paris. The councillors nominated by the king, some of them clerks, others of noble rank, but not peers of the ancient baronage, acquired insensibly a right of suffrage.

An ordinance of Philip the Fair, in 1302, is generally supposed to have fixed the seat of Parliament at Paris, as well as altered its constituent parts. Perhaps a series of progressive changes has been referred to a single epoch. But whether by virtue of this ordinance, or of more gradual events, the character of the whole feudal court was nearly obliterated in that of the Parliament of Paris. A systematic tribunal took the place of a loose aristocratic assembly. It was to hold two sittings in the year, each of two months' du-

ration; it was composed of two prelates, two counts, thirteen clerks, and as many laymen. Great changes were made afterwards in this constitution. The nobility, who originally sat there, grew weary of an attendance which detained them from war, and from their favorite pursuits at home. The bishops were dismissed to their necessary residence upon their sees. As they withdrew, a class of regular lawyers, originally employed, as it appears, in the preparatory business, without any decisive voice, came forward to the higher places, and established a complicated and tedious system of procedure, which was always characteristic of French jurisprudence. They introduced at the same time a new theory of absolute power and unlimited obedience. All feudal privileges were treated as encroachments on the imprescriptible rights of monarchy. With the natural bias of lawyers in favor of prerogative conspired that of the clergy, who fled to the king for refuge against the tyranny of the barons. In the civil and canon laws a system of political maxims was found very uncongenial to the feudal customs. The French lawyers of the fourteenth and fifteenth centuries frequently give their king the title of emperor, and treat disobedience to him as sacrilege.

§ 28. But among these lawyers, although the general tenants of the crown by barony ceased to appear, there still continued to sit a more eminent body, the lay and spiritual peers of France, representatives, as it were, of that ancient baronial aristocracy. It is a very controverted question at what time this exclusive dignity of peerage, a word obviously applicable by the feudal law to all persons co-equal in degree of tenure, was reserved to twelve vassals. At the coronation of Philip Augustus, in 1179, we first perceive the six great feudatories, dukes of Burgundy, Normandy, Guienne, counts of Toulouse, Flanders, Champagne, distinguished by the offices they performed in that ceremony. It was natural, indeed, that, by their princely splendor and importance, they should eclipse such petty lords as Bourbon and Coucy, however equal in quality of tenure. During the reign of Philip Augustus, six ecclesiastical peers, the duke-bishops of Rheims, Laon, and Langres, the count-bishops of Beauvais, Châlons, and Noyon, were added as a sort of parallel or counterpoise. Their precedence does not, however, appear to have carried with it any other privilege, at least in judicature, than other barons enjoyed. But their pre-eminence being fully confirmed, Philip the Fair set the precedent of augmenting their original number, by conferring the dignity of peerage

on the Duke of Brittany and the Count of Artois. Other creations took place subsequently; but these were confined, during the period comprised in this work, to princes of the royal blood. The peers were constant members of the Parliament, from which other vassals holding in chief were never, perhaps, excluded by law, but their attendance was rare in the fourteenth century, and soon afterwards ceased altogether.

§ 29. A judicial body composed of the greatest nobles in France, as well as of learned and eminent lawyers, must naturally have soon become politically important. Notwithstanding their disposition to enhance every royal prerogative, as opposed to feudal privileges, the Parliament was not disinclined to see its own protection invoked by the subject. During the tempests of Charles VI.'s unhappy reign the Parliament acquired a more decided authority, and held, in some degree, the balance between the contending factions of Orleans and Burgundy. This influence was partly owing to one remarkable function attributed to the Parliament, which raised it much above the level of a merely political tribunal, and has at various times wrought striking effects in the French monarchy.

The few ordinances enacted by kings of France in the twelfth and thirteenth centuries were generally by the advice of their royal council, in which probably they were solemnly declared as well as agreed upon. But after the gradual revolution of government, which took away from the feudal aristocracy all control over the king's edicts, and substituted a new magistracy for the ancient baronial court, these legislative ordinances were commonly drawn up by the interior council, or what we may call the ministry. They were in some instances promulgated by the king in Parliament. Others were sent thither for registration or entry upon their records. This formality was by degrees, if not from the beginning, deemed essential to render them authentic and notorious, and therefore indirectly gave them the sanction and validity of a law. In course of time it claimed to itself the right of judging the expediency of edicts proceeding from the king, and we find it as early as the fifteenth century manifesting pretensions of this nature: first, by registering ordinances in such a manner as to testify its own unwillingness and disapprobation, and afterwards by remonstrating against and delaying the registration of laws which it deemed inimical to the public interest. A conspicuous proof of this spirit was given in their opposition to Louis XI. when repealing the Pragmatic Sanction of his

father—an ordinance essential, in their opinion, to the liberties of the Gallican Church. In this instance they ultimately yielded; but at another time they persisted in a refusal to enregister letters containing an alienation of the royal domain.

The counsellors of Parliament were originally appointed by the king; and they were even changed according to circumstances. But in 1468 Louis XI. published a most important ordinance, declaring the presidents and counsellors of Parliament immovable, except in case of legal forfeiture. This extraordinary measure of conferring independence on a body which had already displayed a consciousness of its eminent privilege by opposing the registration of his edicts, is perhaps to be deemed a proof of that short-sightedness as to points of substantial interest so usually found in crafty men. But, be this as it may, there was formed in the Parliament of Paris an independent power not emanating from the royal will, nor liable, except through force, to be destroyed by it; which in later times became almost the sole depository, if not of what we should call the love of freedom, yet of public spirit and attachment to justice. France, so fertile of great men in the sixteenth and seventeenth centuries, might better spare, perhaps, from her annals any class and description of them than her lawyers. Doubtless the Parliament of Paris, with its prejudices and narrow views, its high notions of loyal obedience so strangely mixed up with remonstrances and resistance, its anomalous privilege of objecting to edicts, hardly approved by the nation who did not participate in it, and overturned with facility by the king whenever he thought fit to exert the sinews of his prerogative, was but an inadequate substitute for that co-ordinate sovereignty, that equal concurrence of national representatives in legislation, which has long been the exclusive pride of our government, and to which the States-General of France, in their best days, had never aspired. No man of sane understanding would desire to revive institutions both uncongenial to modern opinions and to the natural order of society. Yet the name of the Parliament of Paris must ever be respectable. It exhibited upon various occasions virtues from which human esteem is as inseparable as the shadow from the substance—a severe adherence to principles, an unaccommodating sincerity, individual disinterestedness and consistency.[17]

[17] A work has appeared within a few years which throws an abundant light on the judicial system, and indeed on the whole civil polity of France, as well as other countries, during the Middle Ages. I allude to "L'Esprit, Origine, et Progrès des Institutions judiciaires des principaux Pays de l'Europe," by M. Meyer, of Amsterdam; especially the first and third volumes.

§ 30. The principal causes that operated in subverting the feudal system may be comprehended under three distinct heads—the increasing power of the crown, the elevation of the lower ranks, and the decay of the feudal principle.

It has been my object in the last pages to point out the acquisitions of power by the crown of France in respect of legislative and judicial authority. The principal augmentations of its domain have been historically mentioned in the last chapter. The French kings naturally acted upon a system, in order to recover those possessions which the improvidence or necessities of the Carlovingian race had suffered almost to fall away from the monarchy. This course, pursued with tolerable steadiness for two or three centuries, restored their effective power. By escheat or forfeiture, by bequest or purchase, by marriage or succession, a number of fiefs were merged in their increasing domain. The reunion of so many fiefs was attempted to be secured by a legal principle, that the domain was inalienable and imprescriptible. This became at length a fundamental maxim in the law of France. But there was one species of infeudation so consonant to ancient usage and prejudice that it could not be avoided upon any suggestions of policy; this was the investiture of younger princes of the blood with considerable territorial appanages. It is remarkable that the epoch of appanages on so great a scale was the reign of St. Louis, whose efforts were constantly directed against feudal independence. Yet he invested his brothers with the counties of Poitou, Anjou, and Artois, and his sons with those of Clermont and Alençon. This practice, in later times, produced very mischievous consequences.

§ 31. Under a second class of events that contributed to destroy the spirit of the feudal system we may reckon the abolition of villenage, the increase of commerce and consequent opulence of merchants and artisans, and especially the institutions of free cities and boroughs. This is one of the most important and interesting steps in the progress of society during the Middle Ages, and deserves particular consideration.

The provincial cities under the Roman Empire enjoyed, as is well known, a municipal magistracy and the right of internal regulation. Nor was it repugnant to the spirit of the Frank or Gothic conquerors to leave them in possession of these privileges. The continuance of municipal institutions has been traced in several cities, especially in the south of France, from the age of the Roman Empire to the twelfth

century, when the formal charters of communities first appear.[19]

The earliest charters of community granted to towns in France have been commonly referred to the time of Louis VI. Noyon, St. Quentin, Laon, and Amiens appear to have been the first that received emancipation at the hands of this prince. The chief towns in the royal domains were successively admitted to the same privileges during the reigns of Louis VI., Louis VII., and Philip Augustus. This example was gradually followed by the peers and other barons; so that by the end of the thirteenth century the custom had prevailed over all France. This enfranchisement of the towns seems to have been due, both in the king and his barons, to their pecuniary exigencies; for we could hardly doubt that their concessions were sold at the highest price, even if the existing charters did not exhibit the fullest proof of it. It is obvious, however, that the coarser methods of rapine must have grown obsolete, and the rights of the inhabitants of towns to property established, before they could enter into any compact with their lord for the purchase of liberty.

In some cases they were indebted for success to their own courage and love of liberty. Oppressed by the exactions of their superiors, they had recourse to arms, and united themselves in a common league, confirmed by oath, for the sake of redress. Several charters bear witness that this spirit of resistance was justified by oppression. Louis VII. frequently declares the tyranny exercised over the towns to be his motive for enfranchising them.

§ 32. The privileges which these towns of France derived from their charters were surprisingly extensive; especially if we do not suspect some of them to be merely in confirmation of previous usages. They were made capable of possessing common property, and authorized to use a common seal as the symbol of their incorporation. The more oppressive and ignominious tokens of subjection, such as the fine paid to the lord for permission to marry their children, were abolished. Their payments of rent or tribute were limited both in amount and as to the occasions when they might be demanded: and these were levied by assessors of their own electing. Some obtained an exemption from assisting their lord in war; others were only bound to follow him when he personally commanded; and almost all limited their service to one, or, at the utmost, very few days. If

[19] See NOTE III., "Municipal Government."

they were persuaded to extend its duration, it was, like that of feudal tenants, at the cost of their superior. Their customs, as to succession and other matters of private right, were reduced to certainty, and, for the most part, laid down in the charter of incorporation. And the observation of these was secured by the most valuable privilege which the chartered towns obtained—that of exemption from the jurisdiction, as well of the royal as the territorial judges. They were subject only to that of magistrates either wholly elected by themselves, or, in some places, with a greater or less participation of choice in the lord. They were empowered to make special rules, or, as we call them, by-laws, so as not to contravene the provisions of their charter or the ordinances of the king.

It was undoubtedly far from the intention of those barons who conferred such immunities upon their subjects to relinquish their own superiority and rights not expressly conceded. But a remarkable change took place in the beginning of the thirteenth century, which affected, in a high degree, the feudal constitution of France. Towns, distrustful to their lord's fidelity, sometimes called in the king as guarantee of his engagements. The first stage of royal interference led to a more extensive measure. Philip Augustus granted letters of safeguard to communities dependent upon the barons, assuring to them his own protection and patronage. And this was followed up so quickly by the court, if we believe some writers, that in the next reign Louis VIII. pretended to the immediate sovereignty over all chartered towns, in exclusion of their original lords. Nothing, perhaps, had so decisive an effect in subverting the feudal aristocracy. The barons perceived, too late, that, for a price long since lavished in prodigal magnificence or useless warfare, they had suffered the source of their wealth to be diverted, and the nerves of their strength to be severed. The government prudently respected the privileges secured by charter. Philip the Long established an officer in all large towns to preserve peace by an armed police; but, though subject to the orders of the crown, he was elected by the burgesses, and they took a mutual oath of fidelity to each other. Thus shielded under the king's mantle, they ventured to encroach upon the neighboring lords, and to retaliate for the long oppression of the commonalty. Every citizen was bound by oath to stand by the common cause against all aggressors, and this obligation was abundantly fulfilled. In order to swell their numbers, it became the practice to ad-

mit all who came to reside within their walls to the rights of burghership, even though they were villeins appurtenant to the soil of a master from whom they had escaped. Others, having obtained the same privileges, continued to dwell in the country; but, upon any dispute with their lords, called in the assistance of their community. In the reign of Charles V. the feudal independence had so completely yielded, that the court began to give in to a new policy, which was ever after pursued, that of maintaining the dignity and privileges of the noble class against those attacks which wealth and liberty encouraged the plebeians to make upon them.

The maritime towns of the south of France entered into separate alliances with foreign states; as Narbonne with Genoa in 1166, and Montpellier in the next century. At the death of Raymond VII., Avignon, Arles, and Marseilles affected to set up republican governments; but they were soon brought into subjection. The independent character of maritime towns was not peculiar to those of the southern provinces. Edward II. and Edward III. negotiated and entered into alliances with the towns of Flanders, to which neither their count nor the king of France were parties. Even so late as the reign of Louis XI. the Duke of Burgundy did not hesitate to address the citizens of Rouen, in consequence of the capture of some ships, as if they had formed an independent state. This evidently arose out of the ancient customs of private warfare, which, long after they were repressed by a stricter police at home, continued with lawless violence on the ocean, and gave a character of piracy to the commercial enterprise of the Middle Ages.

§ 33. Notwithstanding the forces which in opposite directions assailed the feudal system from the enhancement of royal prerogative, and the elevation of the chartered towns, its resistance would have been much longer but for an intrinsic decay. No political institution can endure which does not rivet itself to the hearts of men by ancient prejudice or acknowledged interest. The feudal compact had originally much of this character. Its principle of vitality was warm and active. In fulfilling the obligations of mutual assistance and fidelity by military service, the energies of friendship were awakened, and the ties of moral sympathy superadded to those of positive compact. While private wars were at their height, the connection of lord and vassal grew close and cordial, in proportion to the keenness of their enmity towards others.

But the nature of feudal obligation was far better adapted

to the partial quarrels of neighboring lords than to the wars of kingdoms. Customs founded upon the poverty of the smaller gentry had limited their martial duties to a period never exceeding forty days, and diminished according to the subdivisions of the fief. They could undertake an expedition, but not a campaign; they could burn an open town, but had seldom leisure to besiege a fortress. Hence, when the kings of France and England were engaged in wars which, on our side at least, might be termed national, the inefficiency of the feudal militia became evident. It was not easy to employ the military tenants of England upon the frontiers of Normandy and the Isle of France, within the limits of their term of service. When, under Henry II. and Richard I., the scene of war was frequently transferred to the Garonne or the Charenté, this was still more impracticable. The first remedy to which sovereigns had recourse was to keep their vassals in service after the expiration of their forty days, at a stipulated rate of pay. But this was frequently neither convenient to the tenant, anxious to return back to his household, nor to the king, who could not readily defray the charges of an army. Something was to be devised more adequate to the exigency, though less suitable to the feudal spirit. By the feudal law the fief was, in strictness, forfeited by neglect of attendance upon the lord's expedition. A milder usage introduced a fine, which, however, was generally rather heavy, and assessed at discretion. The first Norman kings of England made these amercements very oppressive. But when a pecuniary payment became the regular course of redeeming personal service, which, under the name of escuage, may be referred to the reign of Henry II., it was essential to liberty that the military tenant should not lie at the mercy of the crown. Accordingly, one of the most important provisions contained in the Magna Charta of John secures the assessment of escuage in Parliament. This is not renewed in the charter of Henry III., but the practice during his reign was conformable to its spirit.

The feudal military tenures had superseded that earlier system of public defense which called upon every man, and especially every land-holder, to protect his country. The relations of a vassal came in place of those of a subject and a citizen. This was the revolution of the ninth century. In the twelfth and thirteenth another innovation rather more gradually prevailed, and marks the third period in the military history of Europe. Mercenary troops were substituted for the feudal militia. Undoubtedly there could never have

been a time when valor was not to be purchased with money; nor could any employment of surplus wealth be more natural either to the ambitious or the weak. But we can not expect to find numerous testimonies of facts of this description. In public national history I am aware of no instance of what may be called a regular army more ancient than the body-guards, or huscarles, of Canute the Great. These select troops amounted to six thousand men, on whom he probably relied to insure the subjection of England. A code of martial law compiled for their regulation is extant in substance; and they are reported to have displayed a military spirit of mutual union, of which their master stood in awe. Harold II. is also said to have had Danish soldiers in pay. The most eminent example of a mercenary army is that by whose assistance William achieved the conquest of England. Historians concur in representing this force to have consisted of sixty thousand men. He afterwards hired soldiers from various regions to resist an invasion from Norway. William Rufus pursued the same course. Hired troops did not, however, in general form a considerable portion of armies till the wars of Henry II. and Philip Augustus. Each of these monarchs took into pay large bodies of mercenaries, chiefly, as we may infer from their appellation of Brabançons, enlisted from the Netherlands. These were always disbanded on cessation of hostilities; and, unfit for any habits but of idleness and license, oppressed the peasantry and ravaged the country without control. In the French wars of Edward III., the whole, I think, of his army served for pay, and was raised by contract with men of rank and influence, who received wages for every soldier according to his station and the arms he bore. The rate of pay was so remarkably high, that, unless we imagine a vast profit to have been intended for the contractors, the private lancers and even archers must have been chiefly taken from the middling classes, the smaller gentry, or rich yeomanry of England.[19] This part of Edward's military system was probably a leading cause of his superiority over the French, among whom the feudal tenantry were called into the field, and swelled their unwieldy armies at Crecy and Poitiers. Both parties, however, in this war employed mercenary troops. Philip had 15,000 Italian crossbow-men

[19] The wages allowed by contract in 1346, were for an earl, 6*s.* 8*d.* per day; for barons and baronets, 4*s.*; for knights, 2*s.*; for squires, 1*s.*; for archers and hobelers (light cavalry), 6*d.*; for archers on foot, 3*d.*; for Welshmen, 2*d.* These sums, multiplied by about 24, to bring them on a level with the present value of money, will show the pay to have been extremely high. The cavalry, of course, furnished themselves with horses and equipments, as well as arms, which were very expensive.

at Crecy. It had for some time before become the trade of soldiers of fortune to enlist under leaders of the same description as themselves in companies of adventure, passing from one service to another, unconcerned as to the cause in which they were retained. These military adventurers played a more remarkable part in Italy than in France, though not a little troublesome to the latter country. The feudal tenures had at least furnished a loyal native militia, whose duties, though much limited in the extent, were defined by usage and enforced by principle. They gave place—in an evil hour for the people, and eventually for sovereigns—to contracts with mutinous hirelings, generally strangers, whose valor in the day of battle inadequately redeemed their bad faith and vexatious rapacity. France, in her calamitous period under Charles VI. and Charles VII., experienced the full effects of military licentiousness. At the expulsion of the English, robbery and disorder were substituted for the more specious plundering of war. Perhaps few measures have ever been more popular, as few certainly have been more politic, than the establishment of regular companies of troops by an ordinance of Charles VII. in 1444. These may justly pass for the earliest institution of a standing army in Europe, though some Italian princes had retained troops constantly in their pay, but prospectively to hostilities, which were seldom long intermitted. Fifteen companies were composed each of a hundred men-at-arms, or lancers; and, in the language of that age, the whole body was 1500 lances. But each lancer had three archers, a coutiller, or soldier armed with a knife, and a page or valet attached to him, all serving on horseback—so that the fifteen companies amounted to 9000 cavalry. From these small beginnings, as they must appear in modern times, arose the regular army of France, which every succeeding king was solicitous to augment. The ban was sometimes convoked, that is, the possessors of fiefs were called upon for military service in subsequent ages; but with more of ostentation than real efficiency.

§ 34. The feudal compact, thus deprived of its original efficacy, soon lost the respect and attachment which had attended it. Homage and investiture became unmeaning ceremonies; the incidents of relief and aid were felt as burdensome exactions. And indeed the rapacity with which these were levied, especially by our Norman sovereigns and their barons, was of itself sufficient to extinguish all the generous feelings of vassalage. Thus galled, as it were, by the armor

which he was compelled to wear, but not to use, the military tenant of England looked no longer with contempt upon the owner of lands in socage, who held his estate with almost the immunities of an allodial proprietor. But the profits which the crown reaped from wardships, and perhaps the prejudices of lawyers, prevented the abolition of military tenures till the restoration of Charles II. In France the fiefs of noblemen were very unjustly exempted from all territorial taxation, though the tailles of later times had, strictly speaking, only superseded the aids to which they had been always liable. The distinction, it is well known, was not annihilated till that event which annihilated all distinctions, the French Revolution.

It is remarkable that, although the feudal system established in England upon the Conquest broke in very much upon our ancient Saxon liberties—though it was attended with harsher servitudes than in any other country, particularly those two intolerable burdens, wardship and marriage—yet it has in general been treated with more favor by English than French writers. The hardiness with which the ancient barons resisted their sovereign, and the noble struggles which they made for civil liberty, especially in that Great Charter, the basement at least, if not the foundation, of our free constitution, have met with a kindred sympathy in the bosoms of Englishmen; while, from an opposite feeling, the French have been shocked at that aristocratic independence which cramped the prerogatives and obscured the lustre of their crown. Yet it is precisely to this feudal policy that France is indebted for that which is ever dearest to her children, their national splendor and power. That kingdom would have been irretrievably dismembered in the tenth century, if the laws of feudal dependence had not preserved its integrity. Empires of unwieldy bulk, like that of Charlemagne, have several times been dissolved by the usurpation of provincial governors, as is recorded both in ancient history and in that of the Mohammedan dynasties in the East. What question can there be that the powerful dukes of Guienne or counts of Toulouse would have thrown off all connection with the crown of France, when usurped by one of their equals, if the slight dependence of vassalage had not been substituted for legitimate subjection to a sovereign?

It is the previous state of society, under the grandchildren of Charlemagne, which we must always keep in mind, if we would appreciate the effects of the feudal system upon the welfare of mankind. The institutions of the eleventh cen-

tury must be compared with those of the ninth, not with the advanced civilization of modern times. If the view that I have taken of those dark ages is correct, the state of anarchy which we usually term feudal was the natural result of a vast and barbarous empire feebly administered, and the cause rather than effect of the general establishment of feudal tenures. These, by preserving the mutual relations of the whole, kept alive the feeling of a common country and common duties, and settled, after the lapse of ages, into the free constitution of England, the firm monarchy of France, and the federal union of Germany.

The utility of any form of polity may be estimated by its effect upon national greatness and security, upon civil liberty and private rights, upon the tranquillity and order of society, upon the increase and diffusion of wealth, or upon the general tone of moral sentiment and energy. The feudal constitution was certainly, as has been observed already, little adapted for the defense of a mighty kingdom, far less for schemes of conquest. But as it prevailed alike in several adjacent countries, none had any thing to fear from the military superiority of its neighbors. It was this inefficiency of the feudal militia, perhaps, that saved Europe during the Middle Ages from the danger of universal monarchy. If an empire equally extensive with that of Charlemagne, and supported by military despotism, had been formed about the twelfth or thirteenth centuries, the seeds of commerce and liberty, just then beginning to shoot, would have perished, and Europe, reduced to a barbarous servitude, might have fallen before the free barbarians of Tartary.

If we look at the feudal polity as a scheme of civil freedom, it bears a noble countenance. To the feudal law it is owing that the very names of right and privilege were not swept away, as in Asia, by the desolating hand of power. The tyranny which, on every favorable moment, was breaking through all barriers, would have rioted without control, if, when the people were poor and disunited, the nobility had not been brave and free. So far as the sphere of feudality extended, it diffused the spirit of liberty and the notions of private right. Every one, I think, will acknowledge this who considers the limitations of the services of vassalage, so cautiously marked in those law-books which are the records of customs, the reciprocity of obligation between the lord and his tenant, the consent required in every measure of a legislative or a general nature, the security, above all, which every vassal found in the administration of justice by his

peers, and even (we may in this sense say) in the trial by combat. The bulk of the people, it is true, were degraded by servitude; but this had no connection with the feudal tenures.

The peace and good order of society were not promoted by this system. Though private wars did not originate in the feudal customs, it is impossible to doubt that they were perpetuated by so convenient an institution, which indeed owed its universal establishment to no other cause. And as predominant habits of warfare are totally irreconcilable with those of industry, not merely by the immediate works of destruction which render its efforts unavailing, but through that contempt of peaceful occupations which they produce, the feudal system must have been intrinsically adverse to the accumulation of wealth and the improvement of those arts which mitigate the evils or abridge the labors of mankind.

But as a school of moral discipline the feudal institutions were perhaps most to be valued. Society had sunk, for several centuries after the dissolution of the Roman Empire, into a condition of utter depravity, where, if any vices could be selected as more eminently characteristic than others, they were falsehood, treachery, and ingratitude. In slowly purging off the lees of this extreme corruption, the feudal spirit exerted its ameliorating influence. Violation of faith stood first in the catalogue of crimes, most repugnant to the very essence of a feudal tenure, most severely and promptly avenged, most branded by general infamy. The feudal lawbooks breathe throughout a spirit of honorable obligation. The feudal course of jurisdiction promoted—what trial by peers is peculiarly calculated to promote—a keener feeling and readier perception of moral as well as of legal distinctions. And as the judgment and sympathy of mankind are seldom mistaken, in these great points of veracity and justice, except through the temporary success of crimes, or the want of a definite standard of right, they gradually recovered themselves when law precluded the one and supplied the other. In the reciprocal services of lord and vassal there was ample scope for every magnanimous and disinterested energy. The heart of man, when placed in circumstances which have a tendency to excite them, will seldom be deficient in such sentiments. No occasions could be more favorable than the protection of a faithful supporter, or the defense of a beneficent suzerain, against such powerful aggression as left little prospect except of sharing in his ruin.

From these feelings engendered by the feudal relation has sprung up the peculiar sentiment of personal reverence and attachment towards a sovereign which we denominate loyalty, alike distinguishable from the stupid devotion of Eastern slaves and from the abstract respect with which free citizens regard their chief magistrate. Men who had been used to swear fealty, to profess subjection, to follow, at home and in the field, a feudal superior and his family, easily transferred the same allegiance to the monarch. It was a very powerful feeling which could make the bravest men put up with slights and ill-treatment at the hands of their sovereign; or call forth all the energies of disinterested exertion for one whom they never saw, and in whose character there was nothing to esteem. In ages when the rights of the community were unfelt, this sentiment was one great preservative of society; and, though collateral or even subservient to more enlarged principles, it is still indispensable to the tranquillity and permanence of every monarchy. In a moral view loyalty has scarcely, perhaps, less tendency to refine and elevate the heart than patriotism itself; and holds a middle place in the scale of human motives, as they ascend from the grosser inducements of self-interest to the furtherance of general happiness and conformity to the purposes of Infinite Wisdom.

NOTES TO CHAPTER II.

I. THE SALIC AND OTHER LAWS OF THE BARBARIANS.

The Salic law exists in two texts: one purely Latin, of which there are fifteen manuscripts; the other mingled with German words, of which there are three. Most have considered the latter to be the original; the manuscripts containing it are entitled *Lex Salica antiquissima*, or *vetustior;* the others generally run *Lex Salica recentior*, or *emendata*. This seems to create a presumption. But others think the pure Latin older than the other. But though the Salic law in its present text is probably not older than the seventh century, it must be referred, in all its substance, to Germany for its birthplace, and to the period of heathenism for its date.—(Lehuërou, *Institutions Mérovingiennes*, p. 88.)

The Ripuarian Franks, Guizot, with some apparent reason, takes for the progenitors of the Austrasians; the Salian, of the Neustrians. The former were settled on the left bank of the Rhine, as *Læti*, or defenders of the frontier, under the Empire. These tribes were united under one government through the assassination of Sigebert at Cologne, in the last years of Clovis, who assumed his crown. Such a theory might tend to explain the subsequent rivalry of these great portions of the Frank monarchy, though it is hardly required for that purpose. The Ripuarian code of law is referred by Guizot to the reign of Dagobert. In this code we find, says Guizot, "more of the Roman law, more of the royal and ecclesiastical power; its provisions are more precise, more extensive, less barbarous; it indicates a farther step in the transition from the German to the Roman form of social life." —("Civil. en France," Leçon 10.)

The Burgundian law, though earlier than

either of these in their recensions, displays a far more advanced state of manners. The Burgundian and Roman are placed on the same footing; more is borrowed from the civil law; the royal power is more developed. This code remained in force after Charlemagne; but Hincmar says that few continued to live by it. In the Visigothic laws enacted in Spain, to the exclusion of the Roman, in 642, all the barbarous elements have disappeared; it is the work of the clergy, half ecclesiastical, half imperial.

It has been remarked by acute writers, Guizot and Troja, that the Salic law does not answer the purpose of a code, being silent on some of the most important regulations of civil society. The rules of the Salic code principally relate to the punishment or compensation of crimes; and the same will be found in our earliest Anglo-Saxon laws. The object of such written laws, with a free and barbarous people, was not to record their usages, or to lay down rules which natural equity would suggest as the occasion might arise, but to prevent the arbitrary infliction of penalties. Chapter lxii., "On Successions," may have been inserted for the sake of the novel provision about Salic lands, which could not have formed a part of old Teutonic customs.

II. TRIBUTARII, LIDI, AND COLONI.

These names, though in a general sense occupying similar positions in the social scale, denote different persons. The *Coloni* were Romans, in the sense of the word then usual; that is, they were the cultivators of land under the Empire, of whom we find abundant notice both in the Theodosian Code and that of Justinian. The Roman colonus was free: he could marry a free woman, and have legitimate children; he could serve in the army, and was capable of property; his peculium, unlike that of the absolute slave, could not be touched by his master. Nor could his fixed rent or duty be enhanced. He could even sue his master for any crime committed with respect to him, or for undue exaction. He was attached, on the other hand, to the soil, and might in certain cases receive corporal punishment. He paid a capitation tax or census to the state, the frequent enhancement of which contributed to that decline of the agricultural population which preceded the barbarian conquest. The documents of the Middle Ages furnish abundant proofs of the continuance of the coloni in this middle state between entire freedom and servitude. And these were doubtless reckoned among the *Tributarii* of the Salic law, whose composition was fixed at forty-five solidi; for a slave had no composition due to his kindred; he was his master's chattel, and to be paid for as such. But the tributary was not necessarily a colonus. All who possessed no lands were subjected by the imperial fisc to a personal capitation. To these Roman tributaries the barbarian *Lidi* seem nearly to have corresponded. This was a class not quite free-born, so that "Francus ingenuus" was no tautology, as some have fancied, yet far from slaves; without political privileges or rights of administering justice in the county court, and so little favored, that, while the Frank accused of a theft was to be brought before his peers, the lidus, under the name of "debilior persona," which probably included the Roman tributary, was to be hanged on the spot. Throughout the Salic and Ripuarian codes the ingenuus is opposed both to the lidus and to the servus; so that the threefold division is incontestable. It corresponds in a certain degree to the *edelingi*, *frilingi*, and *lazzi*, or the *eorl*, *cerol*, and *thrall* of the Northern nations.

III. MUNICIPAL GOVERNMENT.

The privileges of the municipal cities of Italy were originally founded on the republican institutions of Rome herself; the supreme power, so far as it was conceded, and the choice of magistrates, rested with the assembly of the citizens. But after Tiberius took this away from the Roman comitia to vest it in the Senate, it appears that this example was followed in every provincial city. We find everywhere a class named "curiales," or "decuriones" (synonymous words), in whom, or in those elected by them, resided whatever authority was not reserved to the proconsul or other Roman magistrate. Besides these there was Defensor Civitatis—a standing advocate for the city against the oppression of the provincial governor. His office is only known by the laws from the middle of the fourth century, the earliest being of Valentinian and Valens, in 365; but both Cicero (Epist., xii., 50) and Pliny (Epist., x., 8) mention an Ecdicus with something like the same functions; and Justinian always uses that word to express the Defensor Civitatis. He was chosen for five years, not by the curiales, but by the citizens at large. Nor could any decurion be defensor: he was to be taken "ex aliis idoneis personis."

From the curiales, or members of the curia, there was in later times formed a Senate, sometimes called "nobilissima curia." The name of Senator was given

to a privileged class, who, having served through all the public functions of the curia, were entitled to a legal exemption in future, and ascended to the dignity of "clarissimi." Many others, independent of the decurions, obtained this rather by the emperor's favor, or by the performance of duties which regularly led to it. They were nominated by the emperor, and might be removed by him; but otherwise their rank was hereditary. In this way the Senators became an aristocracy, and formed the nobility of Gaul.

Under the domination of the Franks, it appears that the functions of "defensor civitatis" frequently devolved upon the bishop. In course of time the bishop became as much the civil governor of his city as the count was of the rural district. This was a great revolution in the internal history of cities, and one which generally led to the discontinuance of their popular institutions; so that after the reign of Charlemagne, if not earlier, we may perhaps consider a municipality choosing its own officers as an exception, though not a very infrequent one, to the general usage. But instances of this are more commonly found to the south of the Loire, where Roman laws prevailed and the feudal spirit was less vigorous than in the Northern provinces.

CHAPTER III.

THE HISTORY OF ITALY, FROM THE EXTINCTION OF THE CARLOVINGIAN EMPERORS TO THE INVASION OF NAPLES BY CHARLES VIII.

PART I.

§ 1. State of Italy after the Death of Charles the Fat. Coronation of Otho the Great. § 2. State of Rome. Conrad II. § 3. Union of the Kingdom of Italy with the Empire. § 4. Period between Conrad II. and Frederick Barbarossa. § 5. Establishment of the Normans in Naples and Sicily. Roger Guiscard. § 6. Rise of the Lombard cities. § 7. Their internal wars. Frederick Barbarossa. Destruction of Milan. § 8. Lombard League. § 9. Battle of Legnano. Peace of Constance. § 10. Affairs of Sicily. § 11. Temporal Principality of the Popes. § 12. Guelf and Ghibelin Factions. § 13. Otho IV. § 14. Frederick II. § 15. Arrangement of the Italian Republics. § 16. Second Lombard War. § 17. Extinction of the House of Suabia. § 18. Causes of the Success of Lombard Republics. Their Prosperity. § 19. Their Forms of Government. § 20. Contentions between the Nobility and People. Civil Wars.

§ 1. AT the death of Charles the Fat in 888, that part of Italy which acknowledged the supremacy of the Western Empire was divided, like France and Germany, among a few powerful vassals, hereditary governors of provinces. The principal of these were the dukes of Spoleto and Tuscany, the marquises of Ivrea, Susa, and Friuli. The great Lombard duchy of Benevento, which had stood against the arms of Charlemagne, and comprised more than half the present kingdom of Naples, had now fallen into decay, and was straitened by the Greeks in Apulia, and by the principalities of Capua and Salerno, which had been severed from its own territory, on the opposite coast. Though princes of the Carlovingian line continued to reign in France, their character was too little distinguished to challenge the obedience of Italy, already separated by family partitions from the Transalpine nations; and the only contest was among her native chiefs. One of these, Berenger, originally marquis of Friuli, or the March of Treviso, reigned for thirty-six years, but with continually disputed pretensions; and after his death the calamities of Italy were sometimes aggravated by tyranny, and sometimes by intestine war.[1] The Hunga-

[1] Berenger, being grandson, by a daughter, of Louis the Debonair, may be reckoned of the Carlovingian family.

rians desolated Lombardy; the southern coasts were infested by the Saracens, now masters of Sicily. Plunged in an abyss from which she saw no other means of extricating herself, Italy lost sight of her favorite independence, and called in the assistance of Otho the First, king of Germany. Little opposition was made to this powerful monarch. Berenger II., the reigning sovereign of Italy, submitted to hold the kingdom of him as a fief. But some years afterwards, new disturbances arising, Otho descended from the Alps a second time, deposed Berenger, and received at the hands of Pope John XII. the imperial dignity, which had been suspended for nearly forty years (A.D. 962).

§ 2. Every ancient prejudice, every recollection, whether of Augustus or of Charlemagne, had led the Italians to annex the notion of sovereignty to the name of Roman emperor; nor were Otho, or his two immediate descendants, by any means inclined to waive these supposed prerogatives, which they were well able to enforce. Most of the Lombard princes acquiesced without apparent repugnance in the new German government, which was conducted by Otho the Great with much prudence and vigor, and occasionally with severity. The citizens of Lombardy were still better satisfied with a change that insured a more tranquil and regular administration than they had experienced under the preceding kings. But in one, and that the chief of Italian cities, very different sentiments were prevalent. We find, indeed, a considerable obscurity spread over the internal history of Rome during the long period from the recovery of Italy by Belisarius to the end of the eleventh century. The popes appear to have possessed some measure of temporal power, even while the city was professedly governed by the exarchs of Ravenna, in the name of the Eastern Empire. This power became more extensive after her separation from Constantinople. It was, however, subordinate to the undeniable sovereignty of the new imperial family, who were supposed to enter upon all the rights of their predecessors. There was always an imperial officer, or prefect, in that city, to render criminal justice; an oath of allegiance to the emperor was taken by the people; and upon any irregular election of a pope, a circumstance by no means unusual, the emperors held themselves entitled to interpose. But the spirit and even the institutions of the Romans were republican. Amidst the darkness of the tenth century, which no contemporary historian dissipates, we faintly distinguish the awful names of senate, consuls, and tribunes, the domestic

magistracy of Rome. These shadows of past glory strike us at first with surprise; yet there is no improbability in the supposition that a city so renowned and populous, and so happily sheltered from the usurpation of the Lombards, might have preserved, or might afterwards establish, a kind of municipal government, which it would be natural to dignify with those august titles of antiquity. During that anarchy which ensued upon the fall of the Carlovingian dynasty, the Romans acquired an independence which they did not deserve. The city became a prey to the most terrible disorders; the papal chair was sought for at best by bribery or controlling influence, often by violence and assassination; it was filled by such men as naturally rise by such means, whose sway was precarious, and generally ended either in their murder or degradation. For many years the supreme pontiffs were forced upon the Church by two women of high rank but infamous reputation, Theodora and her daughter Marozia. The kings of Italy, whose election in a diet of Lombard princes and bishops at Roncaglia was not conceived to convey any pretension to the sovereignty of Rome, could never obtain any decided influence in papal elections, which were the object of struggling factions among the resident nobility. In this temper of the Romans, they were ill disposed to resume habits of obedience to a foreign sovereign. The next year after Otho's coronation they rebelled, the pope at their head (A.D. 963); but were of course subdued without difficulty. The same republican spirit broke out whenever the emperors were absent in Germany, especially during the minority of Otho III., and directed itself against the temporal superiority of the pope. But when that emperor attained manhood he besieged and took the city, crushing all resistance by measures of severity; and especially by the execution of the consul Crescentius, a leader of the popular faction, to whose instigation the tumultuous license of Rome was principally ascribed.

§ 3. At the death of Otho III. without children, in 1002, the compact between Italy and the emperors of the house of Saxony was determined. Her engagement of fidelity was certainly not applicable to every sovereign whom the princes of Germany might raise to their throne. Accordingly, Ardoin, marquis of Ivrea, was elected king of Italy. But a German party existed among the Lombard princes and bishops, to which his insolent demeanor soon gave a pretext for inviting Henry II., the new king of Germany, collaterally related to their late sovereign. Ardoin was deserted by most

of the Italians, but retained his former subjects in Piedmont, and disputed the crown for many years with Henry, who passed very little time in Italy. During this period there was hardly any recognized government; and the Lombards became more and more accustomed, through necessity, to protect themselves, and to provide for their own internal police. Meanwhile the German nation had become odious to the Italians. The rude soldiery, insolent and addicted to intoxication, were engaged in frequent disputes with the citizens, wherein the latter, as is usual in similar cases, were exposed first to the summary vengeance of the troops, and afterwards to penal chastisement for sedition. In one of these tumults, at the entry of Henry II. in 1004, the city of Pavia was burned to the ground, which inspired its inhabitants with a constant animosity against that emperor. Upon his death in 1024, the Italians were disposed to break once more their connection with Germany, which had elected as sovereign Conrad, duke of Franconia. They offered their crown to Robert, king of France, and to William, duke of Guienne; but neither of them was imprudent enough to involve himself in the difficult and faithless politics of Italy. Eribert, archbishop of Milan, accompanied by some other chief men of Lombardy, repaired to Constance, and tendered the crown to Conrad, which he was already disposed to claim as a sort of dependency upon Germany (A.D. 1024). It does not appear that either Conrad or his successors were ever regularly elected to reign over Italy; but whether this ceremony took place or not, we may certainly date from that time the subjection of Italy to the Germanic body. It became an unquestionable maxim that the votes of a few German princes conferred a right to the sovereignty of a country which had never been conquered, and which had never formally recognized this superiority. But it was an equally fundamental rule that the elected king of Germany could not assume the title of Roman Emperor until his coronation by the pope. The middle appellation of King of the Romans was invented as a sort of approximation to the imperial dignity. But it was not till the reign of Maximilian that the actual coronation at Rome was dispensed with, and the title of emperor taken immediately after the election.

§ 4. The period between Conrad of Franconia and Frederick Barbarossa, or from about the middle of the eleventh to that of the twelfth century, is marked by three great events in Italian history; the struggle between the empire and the papacy for ecclesiastical investitures, the establish-

ment of the Norman kingdom in Naples, and the formation of distinct and nearly independent republics among the cities of Lombardy. The first of these will find a more appropriate place in a subsequent chapter, where I shall trace the progress of ecclesiastical power. But it produced a long and almost incessant state of disturbance in Italy; and should be mentioned at present as one of the main causes which excited in that country a systematic opposition to the imperial authority.

The southern provinces of Italy, in the beginning of the eleventh century, were chiefly subject to the Greek empire, which had latterly recovered part of its losses, and exhibited some ambition and enterprise, though without any intrinsic vigor. They were governed by a lieutenant, styled Catapan,[2] who resided at Bari, in Apulia. On the Mediterranean coast three duchies, or rather republics, of Naples, Gaeta, and Amalfi, had for several ages preserved their connection with the Greek empire, and acknowledged its nominal sovereignty. The Lombard principalities of Benevento, Salerno, and Capua had much declined from their ancient splendor. The Greeks were, however, not likely to attempt any further conquests: the Court of Constantinople had relapsed into its usual indolence; nor had they much right to boast of successes rather due to the Saracen auxiliaries whom they hired from Sicily. No momentous revolution, apparently, threatened the south of Italy, and least of all could it be anticipated from what quarter the storm was about to gather.

§ 5. The followers of Rollo, who rested from plunder and piracy in the quiet possession of Normandy, became devout professors of the Christian faith, and particularly addicted to the custom of pilgrimage, which gratified their curiosity and spirit of adventure. In small bodies, well armed on account of the lawless character of the countries through which they passed, the Norman pilgrims visited the shrines of Italy and even the Holy Land. Some of these, very early in the eleventh century, were engaged by a Lombard prince of Salerno against the Saracens, who had invaded his territory; and through that superiority of valor, and perhaps of corporal strength, which this singular people seem to have possessed above all other Europeans, they made surprising havoc among the enemy. This exploit led to fresh engagements, and these engagements drew new adventurers from Normandy; they founded the little city of Aversa, near

[2] Catapanus, from κατα πάν, one employed in general administration of affairs.

Capua, and were employed by the Greeks against the Saracens of Sicily. But, though performing splendid services in this war, they were ill repaid by their ungrateful employers; and being by no means of a temper to bear with injury, they revenged themselves by a sudden invasion of Apulia. This province was speedily subdued, and divided among twelve Norman counts; but soon afterwards Robert Guiscard, one of twelve brothers, many of whom were renowned in these Italian wars, acquired the sovereignty; and, adding Calabria to his conquests, put an end to the long dominion of the Eastern emperors in Italy. He reduced the principalities of Salerno and Benevento; in the latter instance sharing the spoil with the pope, who took the city to himself, while Robert retained the territory. His conquests in Greece, which he invaded with the magnificent design of overthrowing the Eastern Empire, were at least equally splendid, though less durable (A.D. 1061). Roger, his younger brother, undertook, meanwhile, the romantic enterprise of conquering the island of Sicily with a small body of Norman volunteers. But the Saracens were broken into petty states, and discouraged by the bad success of their brethren in Spain and Sardinia. After many years of war Roger became sole master of Sicily, and took the title of count. The son of this prince, upon the extinction of Robert Guiscard's posterity, united the two Norman sovereignties, and, subjugating the free republics of Naples and Amalfi, and the principality of Capua, established a boundary which has hardly been changed since his time (A.D. 1127).

The first successes of these Norman leaders were viewed unfavorably by the popes. Leo IX. marched in person against Robert Guiscard with an army of German mercenaries, but was beaten and made prisoner in this unwise enterprise, the scandal of which nothing but good-fortune could have lightened. He fell, however, into the hands of a devout people, who implored his absolution for the crime of defending themselves; and, whether through gratitude or as the price of his liberation, invested them with their recent conquests in Apulia, as fiefs of the Holy See. This investiture was repeated and enlarged as the popes, especially in their contention with Henry IV. and Henry V., found the advantage of using the Normans as faithful auxiliaries. Finally, Innocent II., in 1139, conferred upon Roger the title of King of Sicily. It is difficult to understand by what pretense these countries could be claimed by the See of Rome in sovereignty, unless by virtue of the pretended donation of Con-

stantine, or that of Louis the Debonair, which is hardly less suspicious; and least of all how Innocent II. could surrender the liberties of the city of Naples, whether that was considered as an independent republic or as a portion of the Greek empire. But the Normans, who had no title but their swords, were naturally glad to give an appearance of legitimacy to their conquest; and the kingdom of Naples, even in the hands of the most powerful princes in Europe, never ceased to pay a feudal acknowledgment to the chair of St. Peter.

§ 6. The revolutions which time brought forth on the opposite side of Italy were still more interesting. Under the Lombard and French princes every city with its adjacent district was subject to the government and jurisdiction of a count, who was himself subordinate to the duke or marquis of the province. From these counties it was the practice of the first German emperors to dismember particular towns or tracts of country, granting them upon a feudal tenure to rural lords, by many of whom, also, the same title was assumed. Thus by degrees the authority of the original officers was confined almost to the walls of their own cities; and in many cases the bishops obtained a grant of the temporal government, and exercised the functions which had belonged to the count.

It is impossible to ascertain the time at which the cities of Lombardy began to assume a republican form of government, or to trace with precision the gradations of their progress. These cities were far more populous and better defended than those of France; they had learned to stand sieges in the Hungarian invasions of the tenth century, and had acquired the right of protecting themselves by strong fortifications. Those which had been placed under the temporal government of their bishops had peculiar advantages in struggling for emancipation. This circumstance in the state of Lombardy I consider as highly important towards explaining the subsequent revolution. Notwithstanding several exceptions, a Churchman was less likely to be bold and active in command than a soldier; and the sort of election which was always necessary, and sometimes more than nominal, on a vacancy of the see, kept up among the citizens a notion that the authority of their bishop and chief magistrate emanated in some degree from themselves. In many instances, especially in the Church of Milan, the earliest, perhaps, and certainly the most famous of Lombard republics, there occurred a disputed election; two, or even three, com-

petitors claimed the archiepiscopal functions, and were compelled, in the absence of the emperors, to obtain the exercise of them by means of their own faction among the citizens.

These were the general causes which, operating at various times during the eleventh century, seem gradually to have produced a republican form of government in the Italian cities. But this part of history is very obscure. The archives of all cities before the reign of Frederick Barbarossa have perished. We perceive, however, throughout the eleventh century, that the cities were continually in warfare with each other. This, indeed, was according to the manners of that age, and no inference can absolutely be drawn from it as to their internal freedom. But it is observable that their chronicles speak, in recording these transactions, of the people, and not of their leaders, which is the true republican tone of history. Thus, in the Annals of Pisa, we read, under the years 1002 and 1004, of victories gained by the Pisans over the people of Lucca; in 1006, that the Pisans and Genoese conquered Sardinia. These annals, indeed, are not by a contemporary writer, nor perhaps of much authority. But we have an original account of a war that broke out in 1057, between Pavia and Milan, in which the citizens are said to have raised armies, made alliances, hired foreign troops, and in every respect acted like independent states. There was, in fact, no power left in the empire to control them. The two Henrys IV. and V. were so much embarrassed during the quarrel concerning investitures, and the continual troubles of Germany, that they were less likely to interfere with the rising freedom of the Italian cities than to purchase their assistance by large concessions. Henry IV. granted a charter to Pisa, in 1081, full of the most important privileges, promising even not to name any marquis of Tuscany without the people's consent; and it is possible that although the instruments have perished, other places might obtain similar advantages. However this may be, it is certain that before the death of Henry V., in 1125, almost all the cities of Lombardy, and many among those of Tuscany, were accustomed to elect their own magistrates, and to act as independent communities in waging war and in domestic government.

The territory subjected originally to the count or bishop of these cities had been reduced, as I mentioned above, by numerous concessions to the rural nobility. But the new republics, deeming themselves entitled to all which their former governors had once possessed, began to attack their

nearest neighbors, and to recover the sovereignty of all their ancient territory. They besieged the castles of the rural counts, and successively reduced them into subjection. They suppressed some minor communities, which had been formed in imitation of themselves by little towns belonging to their district. Sometimes they purchased feudal superiorities or territorial jurisdictions, and, according to a policy not unusual with the stronger party, converted the rights of property into those of government. Hence, at the middle of the twelfth century, we are assured by a contemporary writer that hardly any nobleman could be found, except the Marquis of Montferrat, who had not submitted to some city. We may except also, I should presume, the families of Este and Malaspina, as well as that of Savoy. Muratori produces many charters of mutual compact between the nobles and the neighboring cities; whereof one invariable article is, that the former should reside within the walls a certain number of months in the year. The rural nobility, thus deprived of the independence which had endeared their castles, imbibed a new ambition of directing the municipal government of the cities, which consequently, during this period of the republics, fell chiefly into the hands of the superior families. It was the sagacious policy of the Lombards to invite settlers by throwing open to them the privileges of citizenship, and sometimes they even bestowed them by compulsion. Sometimes a city, imitating the wisdom of ancient Rome, granted these privileges to all the inhabitants of another. Thus the principal cities, and especially Milan, reached, before the middle of the twelfth century, a degree of population very far beyond that of the capitals of the great kingdoms. Within their strong walls and deep trenches, and in the midst of their well-peopled streets, the industrious dwelt secure from the license of armed pillagers and the oppressors of feudal tyrants. Artisans, whom the military land-holders contemned, acquired and deserved the right of bearing arms for their own and the public defense. Their occupations became liberal, because they were the foundation of their political franchises; the citizens were classed in companies according to their respective crafts, each of which had its tribune or standard-bearer (gonfalonier), at whose command, when any tumult arose or enemy threatened, they rushed in arms to muster in the market-place.

But, unhappily, we can not extend the sympathy which institutions so full of liberty create to the national conduct of these little republics. Their love of freedom was alloyed

by that restless spirit, from which a democracy is seldom exempt, of tyrannizing over weaker neighbors. They played over again the tragedy of ancient Greece, with all its circumstances of inveterate hatred, unjust ambition, and atrocious retaliation, though with less consummate actors upon the scene. Among all the Lombard cities, Milan was the most conspicuous, as well for power and population as for the abuse of those resources by arbitrary and ambitious conduct. Thus, in 1111, they razed the town of Lodi to the ground, distributing the inhabitants among six villages, and subjecting them to an unrelenting despotism. Thus, in 1118, they commenced a war of ten years' duration with the little city of Como; but the surprising perseverance of its inhabitants procured for them better terms of capitulation, though they lost their original independence. The Cremonese treated so harshly the town of Crema that it revolted from them, and put itself under the protection of Milan. Cities of more equal forces carried on interminable hostilities by wasting each other's territory, destroying the harvests, and burning the villages.

The sovereignty of the emperors, meanwhile, though not very effective, was in theory always admitted. Their name was used in public acts, and appeared upon the coin. When they came into Italy they had certain customary supplies of provisions, called fodrum regale, at the expense of the city where they resided; during their presence all inferior magistracies were suspended, and the right of jurisdiction devolved upon them alone. But such was the jealousy of the Lombards that they built the royal palaces outside their gates; a precaution to which the emperors were compelled to submit. This was at a very early time a subject of contention between the inhabitants of Pavia and Conrad II., whose palace, seated in the heart of the city, they had demolished in a sedition, and were unwilling to rebuild in that situation.

§ 7. Such was the condition of Italy when Frederick Barbarossa, duke of Suabia, and nephew of the last emperor, Conrad III., ascended the throne of Germany (A.D. 1152). His accession forms the commencement of a new period, the duration of which is about one hundred years, and which is terminated by the death of Conrad IV., the last emperor of the house of Suabia. It is characterized, like the former, by three distinguishing features in Italian history; the victorious struggle of the Lombard and other cities for independence, the final establishment of a temporal sovereignty over

the middle provinces by the popes, and the union of the kingdom of Naples to the dominions of the house of Suabia.

In Frederick Barbarossa the Italians found a very different sovereign from the two last emperors, Lothaire and Conrad III., who had seldom appeared in Italy, and with forces quite inadequate to control such insubordinate subjects. The distinguished valor and ability of this prince rendered a severe and arbitrary temper, and a haughty conceit of his imperial rights, more formidable. He believed that, as successor of Augustus, he inherited the kingdoms of the world. In the same right, he more powerfully, if not more rationally, laid claim to the entire prerogatives of the Roman emperors over their own subjects; and in this the professors of the civil law—which was now diligently studied—lent him their aid with the utmost servility. To such a disposition the self-government of the Lombard cities appeared mere rebellion. Milan especially, the most renowned of them all, drew down upon herself his inveterate resentment. He found, unfortunately, too good a pretense in her behavior towards Lodi. Two natives of that ruined city threw themselves at the emperor's feet, imploring him, as the ultimate source of justice, to redress the wrongs of their country. It is a striking proof of the terror inspired by Milan that the consuls of Lodi disavowed the complaints of their countrymen, and the inhabitants trembled at the danger of provoking a summary vengeance, against which the imperial arms seemed no protection. The Milanese, however, abstained from attacking the people of Lodi, though they treated with contempt the emperor's order to leave them at liberty. Frederick meanwhile came into Italy, and held a diet at Roncaglia, where complaints poured in from many quarters against the Milanese. Pavia and Cremona, their ancient enemies, were impatient to renew hostilities under the imperial auspices. Brescia, Tortona, and Crema were allies, or rather dependents, of Milan. Frederick soon took occasion to attack the latter confederacy. Tortona was compelled to surrender, and levelled to the ground. But a feudal army was soon dissolved; the emperor had much to demand his attention at Rome, where he was on ill terms with Adrian IV.; and when the imperial troops were withdrawn from Lombardy, the Milanese rebuilt Tortona, and expelled the citizens of Lodi from their dwellings. Frederick assembled a fresh army, to which almost every city of Lombardy, willingly or by force, contributed its militia. It is said to have exceeded a hundred thousand men. The Milanese shut

themselves up within their walls; and perhaps might have defied the imperial forces, if their immense population, which gave them confidence in arms, had not exposed them to a different enemy. Milan was obliged by hunger to capitulate, upon conditions not very severe, if a vanquished people could ever safely rely upon the convention that testifies their submission.

Frederick, after the surrender of Milan, held a diet at Roncaglia, where the effect of his victories was fatally perceived (A.D. 1158). The bishops, the higher nobility, the lawyers, vied with one another in exalting his prerogatives. He defined the regalian rights, as they were called, in such a manner as to exclude the cities and private proprietors from coining money, and from tolls or territorial dues, which they had for many years possessed. These, however, he permitted them to retain for a pecuniary stipulation. A more important innovation was the appointment of magistrates, with the title of podestà, to administer justice concurrently with the consuls; but he soon proceeded to abolish the latter office in many cities, and to throw the whole government into the hands of his own magistrates. He prohibited the cities from levying war against each other. It may be presumed that he showed no favor to Milan. The capitulation was set at nought in its most express provisions; a podestà was sent to supersede the consuls, and part of the territory taken away. Whatever might be the risk of resistance, and the Milanese had experience enough not to undervalue it, they were determined rather to see their liberties at once overthrown than gradually destroyed by a faithless tyrant. They availed themselves of the absence of his army to renew the war. Its issue was more calamitous than that of the last. Almost all Lombardy lay patient under subjection. The small town of Crema, always the faithful ally of Milan, stood a memorable siege against the imperial army; but the inhabitants were ultimately compelled to capitulate for their lives, and the vindictive Cremonese razed their dwellings to the ground. But all smaller calamities were forgotten when the great city of Milan, worn out by famine rather than subdued by force, was reduced to surrender at discretion. Lombardy stood in anxious suspense to know the determination of Frederick respecting this ancient metropolis, the seat of the early Christian emperors, and second only to Rome in the hierarchy of the Latin Church. A delay of three weeks excited fallacious hopes; but at the end of that time an order was given to the Milanese to evacuate their habitations. The deserted streets

were instantly occupied by the imperial army; the people of Pavia and Cremona, of Lodi and Como, were commissioned to revenge themselves on the respective quarters of the city assigned to them; and in a few days the pillaged churches stood alone amidst the ruins of what had been Milan (A.D. 1162).

There was now little left of that freedom to which Lombardy had aspired: it was gone like a pleasant dream, and she awoke to the fears and miseries of servitude. Frederick obeyed the dictates of his vindictive temper, and of the policy usual among statesmen. He abrogated the consular regimen in some even of the cities which had supported him, and established his podestà in their place. This magistrate was always a stranger, frequently not even an Italian; and he came to his office with all those prejudices against the people he was to govern which cut off every hope of justice and humanity. The citizens of Lombardy, especially the Milanese, who had been dispersed in the villages adjoining their ruined capital, were unable to meet the perpetual demands of tribute. In some parts, it is said, two-thirds of the produce of their lands, the only wealth that remained, were extorted from them by the imperial officers. It was in vain that they prostrated themselves at the feet of Frederick. He gave at the best only vague promises of redress; they were in his eyes rebels; his delegates had acted as faithful officers, whom, even if they had gone a little beyond his intentions, he could not be expected to punish.

§ 8. But there still remained at the heart of Lombardy the strong principle of national liberty, imperishable among the perishing armies of her patriots, inconsumable in the conflagration of her cities. Those whom private animosities had led to assist the German conqueror blushed at the degradation of their country, and at the share they had taken in it. A league was secretly formed, in which Cremona, one of the chief cities on the imperial side, took a prominent part. Those beyond the Adige, hitherto not much engaged in the disputes of Central Lombardy, had already formed a separate confederacy to secure themselves from encroachments which appeared the more unjust, as they had never borne arms against the emperor. Their first successes corresponded to the justice of their cause; Frederick was repulsed from the territory of Verona—a fortunate augury for the rest of Lombardy (A.D. 1164). These two clusters of cities on the east and west of the Adige now united themselves into the famous Lombard league, the terms of which

were settled in a general diet. Their alliance was to last twenty years, during which they pledged themselves to mutual assistance against any one who should exact more from them than they had been used to perform from the time of Henry to the first coming of Frederick into Italy; implying in this the recovery of their elective magistracies, their rights of war and peace, and those lucrative privileges which, under the name of regalian, had been wrested from them in the diet of Roncaglia.

§ 9. This union of the Lombard cities was formed at a very favorable juncture. Frederick had, almost ever since his accession, been engaged in open hostility with the See of Rome, and was pursuing the fruitless policy of Henry IV., who had endeavored to substitute an anti-pope of his own faction for the legitimate pontiff. In the prosecution of this scheme he had besieged Rome with a great army, which, the citizens resisting longer than he expected, fell a prey to the autumnal pestilence which visits the neighborhood of that capital. The flower of German nobility was cut off by this calamity, and the emperor recrossed the Alps, entirely unable for the present to withstand the Lombard confederacy. Their first overt act of insurrection was the rebuilding of Milan; the confederate troops all joined in this undertaking; and the Milanese, still numerous, though dispersed and persecuted, revived as a powerful republic. Lodi was compelled to enter into the league; Pavia alone continued on the imperial side. As a check to Pavia and to the Marquis of Montferrat, the most potent of the independent nobility, the Lombards planned the erection of a new city between the confines of these two enemies in a rich plain to the south of the Po, and bestowed upon it, in compliment to the pope, Alexander III., the name of Alessandria. Though, from its hasty construction, Alessandria was even in that age deemed rude in appearance, it rapidly became a thriving and populous city. The intrinsic energy and resources of Lombardy were now made manifest. Frederick, who had triumphed by their disunion, was unequal to contend against their league. After several years of indecisive war, the emperor invaded the Milanese territory; but the confederates gave him battle, and gained a complete victory at Legnano (A.D. 1176). Frederick escaped alone and disguised, from the field, with little hope of raising a fresh army, though still reluctant, from shame, to acquiesce in the freedom of Lombardy. He was at length persuaded, through the mediation of the republic of Venice, to consent to a truce of six years, the provisional

terms of which were all favorable to the league. It was weakened, however, by the defection of some of its own members; Cremona, which had never cordially united with her ancient enemies, made separate conditions with Frederick, and suffered herself to be named among the cities on the imperial side in the armistice. Tortona and even Alessandria followed the same course during the six years of its duration—a fatal testimony of unsubdued animosities, and omen of the calamities of Italy. At the expiration of the truce, Frederick's anxiety to secure the crown for his son overcame his pride, and the famous peace of Constance established the Lombard republics in real independence (A.D. 1183).

By the treaty of Constance the cities were maintained in the enjoyment of all the regalian rights, whether within their walls or in their district, which they could claim by usage. Those of levying war, of erecting fortifications, and of administering civil and criminal justice, were specially mentioned. The nomination of their consuls, or other magistrates, was left absolutely to the citizens; but they were to receive the investiture of their office from an imperial legate. The customary tributes of provision during the emperor's residence in Italy were preserved; and he was authorized to appoint in every city a judge of appeal in civil causes. The Lombard league was confirmed, and the cities were permitted to renew it at their own discretion; but they were to take, every ten years, an oath of fidelity to the emperor. This just compact preserved, along with every security for the liberties and welfare of the cities, as much of the imperial prerogatives as could be exercised by a foreign sovereign consistently with the people's happiness.

§ 10. Frederick did not attempt to molest the cities of Lombardy in the enjoyment of those privileges conceded by the treaty of Constance. His ambition was diverted to a new scheme for aggrandizing the house of Suabia by the marriage of his eldest son Henry with Constance, the aunt and heiress of William II., king of Sicily. That kingdom, which the first monarch Roger had elevated to a high pitch of renown and power, fell into decay through the misconduct of his son William, surnamed the Bad, and did not recover much of its lustre under the second William, though styled the Good. His death without issue was apparently no remote event; and Constance was the sole legitimate survivor of the royal family. It is a curious circumstance that no hereditary kingdom appears absolutely to have ex-

cluded females from its throne, except that which from its magnitude was of all the most secure from falling into the condition of a province. The Sicilians felt too late the defect of their constitution, which permitted an independent people to be transferred, as the dowry of a woman, to a foreign prince, by whose ministers they might justly expect to be insulted and oppressed. Henry, whose marriage with Constance took place in 1186, and who succeeded in her right to the throne of Sicily three years afterwards, was exasperated by a courageous but unsuccessful effort of the Norman barons to preserve the crown for an illegitimate branch of the royal family; and his reign is disgraced by a series of atrocious cruelties. The power of the house of Suabia was now at its zenith on each side of the Alps; Henry received the imperial crown the year after his father's death in the third crusade, and even prevailed upon the princes of Germany to elect his infant son Frederick as his successor. But his own premature decease clouded the prospects of his family: Constance survived him but a year; and a child of four years old was left with the inheritance of a kingdom which his father's severity had rendered disaffected, and which the leaders of German mercenaries in his service desolated and disputed.

§ 11. During the minority of Frederick II., from 1196 to 1216, the papal chair was filled by Innocent III., a name second only, and hardly second, to that of Gregory VII. Young, noble, and intrepid, he united with the accustomed spirit of ecclesiastical usurpation, which no one had ever carried to so high a point, the more worldly ambition of consolidating a separate principality for the Holy See in the centre of Italy. The real or spurious donations of Constantine, Pepin, Charlemagne, and Louis, had given rise to a perpetual claim on the part of the popes to very extensive dominions; but little of this had been effectuated, and in Rome itself they were thwarted by the prefect—an officer who swore fidelity to the emperor—and by the insubordinate spirit of the people. In the very neighborhood the small cities owned no subjection to the capital, and were probably as much self-governed as those of Lombardy. One is transported back to the earliest times of the republic in reading of the desperate wars between Rome and Tibur or Tusculum; neither of which was subjugated till the latter part of the twelfth century. At a farther distance were the duchy of Spoleto, the march of Ancona, and what had been the exarchate of Ravenna, to all of which the popes had more

or less grounded pretensions. Early in the last-mentioned age, the famous Countess Matilda, to whose zealous protection Gregory VII. had been eminently indebted during his long dispute with the emperor, granted the reversion of all her possessions to the Holy See, first in the lifetime of Gregory, and again under the pontificate of Paschal III. These were very extensive, and held by different titles. Of her vast imperial fiefs, Mantua, Modena, and Tuscany, she certainly could not dispose. The duchy of Spoleto and march of Ancona were supposed to rest upon a different footing. These had been formerly among the great fiefs of the kingdom of Italy. They are commonly considered as her allodial or patrimonial property; yet it is not easy to see how, being herself a subject of the empire, she could transfer even her allodial estates from its sovereignty. Nor, on the other hand, can it apparently be maintained that she was lawful sovereign of countries which had not long since been imperial fiefs, and the suzerainty over which had never been renounced. The original title of the Holy See, therefore, does not seem incontestable even as to this part of Matilda's donation. It is certain, however, that the emperors kept possession of the whole during the twelfth century, and treated both Spoleto and Ancona as parts of the empire, notwithstanding continual remonstrances from the Roman pontiffs. Frederick Barbarossa, at the negotiations of Venice in 1177, promised to restore the patrimony of Matilda in fifteen years; but at the close of that period Henry VI. was not disposed to execute this arrangement, and granted the county in fief to some of his German followers. Upon his death, the circumstances were favorable to Innocent III. The infant King of Sicily had been intrusted by Constance to his guardianship. A double election of Philip, brother of Henry VI., and of Otho, duke of Brunswick, engaged the princes of Germany, who had entirely overlooked the claims of young Frederick, in a doubtful civil war. Neither party was in a condition to enter Italy; and the imperial dignity was vacant for several years, till, the death of Philip removing one competitor, Otho IV., whom the pope had constantly favored, was crowned emperor. During this interval the Italians had no superior, and Innocent availed himself of it to maintain the pretensions of the See. These he backed by the production of rather a questionable document, the will of Henry VI., said to have been found among the baggage of Marquard, one of the German soldiers who had been invested with fiefs by the late emperor. The cities of what we

now call the ecclesiastical state had in the twelfth century their own municipal government like those of Lombardy; but they were far less able to assert a complete independence. They gladly, therefore, put themselves under the protection of the Holy See, which held out some prospect of securing them from Marquard and other rapacious partisans, without disturbing their internal regulations. Thus the duchy of Spoleto and march of Ancona submitted to Innocent III.; but he was not strong enough to keep constant possession of such extensive territories, and some years afterwards adopted the prudent course of granting Ancona in fief to the Marquis of Este. He did not, as may be supposed, neglect his authority at home; the Prefect of Rome was now compelled to swear allegiance to the pope, which put an end to the regular imperial supremacy over that city, and the privileges of the citizens were abridged. This is the proper era of that temporal sovereignty which the bishops of Rome possess over their own city, though still prevented by various causes, for nearly three centuries, from becoming unquestioned and unlimited.

§ 12. In the wars of Frederick Barbarossa against Milan and its allies, we have seen the cities of Lombardy divided, and a considerable number of them firmly attached to the imperial interest. The jealousies long existing between the different classes, and only suspended by the national struggle which terminated at Constance, gave rise to new modifications of interests, and new relations towards the empire. About the year 1200, or perhaps a little later, the two leading parties which divided the cities of Lombardy, and whose mutual animosity—having no general subject of contention—required the association of a name to direct as well as invigorate its prejudices, became distinguished by the celebrated appellations of GUELFS and GHIBELINS; the former adhering to the papal side, the latter to that of the emperor. These names were derived from Germany, and had been the rallying word of faction for more than half a century in that country before they were transported to a still more favorable soil. The Guelfs took their name from a very illustrious family, several of whom had successively been dukes of Bavaria in the tenth and eleventh centuries. The heiress of the last of these intermarried with a younger son of the house of Este, a noble family settled near Padua, and possessed of great estates on each bank of the lower Po. They gave birth to a second line of Guelfs, from whom the royal house of Brunswick is descended. The name of Ghibelin is derived

from a village in Franconia, whence Conrad the Salic came, the progenitor, through females, of the Suabian emperors. At the election of Lothaire in 1125, the Suabian family were disappointed of what they considered almost an hereditary possession; and at this time an hostility appears to have commenced between them and the house of Guelf, who were nearly related to Lothaire. Henry the Proud and his son Henry the Lion, representatives of the latter family, were frequently persecuted by the Suabian emperors; but their fortunes belong to the history of Germany. Meanwhile the elder branch, though not reserved for such glorious destinies as the Guelfs, continued to flourish in Italy; the marquises of Este were by far the most powerful nobles in Eastern Lombardy, and about the end of the twelfth century began to be considered as the heads of the Church party in their neighborhood. They were frequently chosen to the office of podestà, or chief magistrate, by the cities of Romagna; and in 1208 the people of Ferrara set the fatal example of sacrificing their freedom for tranquillity by electing Azzo VII., marquis of Este, as their lord or sovereign.

§ 13. Otho IV. was son of Henry the Lion, and consequently head of the Guelfs. On his obtaining the imperial crown (A.D. 1198), the prejudices of Italian factions were diverted out of their usual channel. He was soon engaged in a quarrel with the pope, whose hostility to the empire was certain, into whatever hands it might fall. In Milan, however, and generally in the cities which had belonged to the Lombard league against Frederick I., hatred of the house of Suabia prevailed more than jealousy of the imperial prerogatives; they adhered to names rather than to principles, and supported a Guelf emperor even against the pope. Terms of this description, having no definite relation to principles which it might be troublesome to learn and defend, are always acceptable to mankind, and have the peculiar advantage of precluding altogether that spirit of compromise and accommodation by which it is sometimes endeavored to obstruct their tendency to hate and injure each other. From this time, every city, and almost every citizen, gloried in one of these barbarous denominations. In several cities the imperial party predominated through hatred of their neighbors, who espoused that of the Church. Thus the inveterate feuds between Pisa and Florence, Modena and Bologna, Cremona and Milan, threw them into opposite factions. But there was in every one of these a strong party against that which prevailed, and consequently a Guelf city frequently became

Ghibelin, or conversely, according to the fluctuations of the time.

§ 14. The change to which we have adverted in the politics of the Guelf party lasted only during the reign of Otho IV. When the heir of the house of Suabia grew up to manhood, Innocent, who, though his guardian, had taken little care of his interests, as long as he flattered himself with the hope of finding a Guelf emperor obedient, placed the young Frederick at the head of an opposition composed of cities always attached to his family, and of such as implicitly followed the See of Rome. He met with considerable success both in Italy and Germany, and, after the death of Otho, received the imperial crown (A.D. 1212). But he had no longer to expect any assistance from the pope who conferred it. Innocent was dead, and Honorius III., his successor, could not behold without apprehension the vast power of Frederick, supported in Lombardy by a faction which balanced that of the Church, and menacing the ecclesiastical territories on the other side by the possession of Naples and Sicily. This kingdom, feudatory to Rome, and long her firmest ally, was now, by a fatal connection which she had not been able to prevent, thrown into the scale of her most dangerous enemy. Hence the temporal dominion which Innocent III. had taken so much pains to establish, became a very precarious possession, exposed on each side to the attacks of a power that had legitimate pretensions to almost every province composing it. The life of Frederick II. was wasted in an unceasing contention with the Church, and with his Italian subjects, whom she excited to rebellions against him. Without inveighing, like the popish writers, against this prince, certainly an encourager of letters, and endowed with many eminent qualities, we may lay to his charge a good deal of dissimulation; I will not add ambition, because I am not aware of any period in the reign of Frederick when he was not obliged to act on his defense against the aggression of others. But if he had been a model of virtues, such men as Honorius III., Gregory IX., and Innocent IV., the popes with whom he had successively to contend would not have given him respite while he remained master of Naples as as well as the Empire.

It was the custom of every pope to urge princes into a crusade, which the condition of Palestine rendered indispensable, or, more properly, desperate. But this great piece of supererogatory devotion had never yet been raised into an absolute duty of their station, nor had even private persons

been ever required to take up the cross by compulsion. Honorius III., however, exacted a vow from Frederick, before he conferred upon him the imperial crown, that he would undertake a crusade for the deliverance of Jerusalem. Frederick submitted to this engagement, which perhaps he never designed to keep, and certainly endeavored afterwards to evade. Though he became by marriage nominal king of Jerusalem, his excellent understanding was not captivated with so barren a prospect, and at length his delays in the performance of his vow provoked Gregory IX. to issue against him a sentence of excommunication. Such a thunder-bolt was not to be lightly regarded, and Frederick sailed, the next year, for Palestine. But having disdained to solicit absolution for what he considered as no crime, the Court of Rome was excited to still fiercer indignation against this profanation of a crusade by an excommunicated sovereign. Upon his arrival in Palestine, he received intelligence that the papal troops had broken into the kingdom of Naples. No one could rationally have blamed Frederick, if he had quitted the Holy Land as he found it; but he made a treaty with the Saracens, which though by no means so disadvantageous as under all the circumstances might have been expected, served as a pretext for new calumnies against him in Europe. The charge of irreligion, eagerly and successfully propagated, he repelled by persecuting edicts against heresy that do no great honor to his memory, and availed him little at the time. Over his Neapolitan dominions he exercised a rigorous government, rendered perhaps necessary by the levity and insubordination characteristic of the inhabitants, but which tended, through the artful representations of Honorius and Gregory, to alarm and alienate the Italian republics.

A new generation had risen up in Lombardy since the peace of Constance, and the prerogatives reserved by that treaty to the Empire were so seldom called into action, that few cities were disposed to recollect their existence. They denominated themselves Guelfs or Ghibelins, according to habit, and out of their mutual opposition, but without much reference to the Empire. Those, however, of the former party, and especially Milan, retained their antipathy to the house of Suabia. Though Frederick II. was entitled, as far as established usage can create a right, to the sovereignty of Italy, the Milanese would never acknowledge him, nor permit his coronation at Monza, according to ancient ceremony, with the iron crown of the Lombard kings. The

pope fomented, to the utmost of his power, this disaffected spirit, and encouraged the Lombard cities to renew their former league. This, although conformable to a provision in the treaty of Constance, was manifestly hostile to Frederick, and may be considered as the commencement of a second contest between the republican cities of Lombardy and the Empire. But there was a striking difference between this and the former confederacy against Frederick Barbarossa. In the league of 1167, almost every city, forgetting all smaller animosities in the great cause of defending the national privileges, contributed its share of exertion to sustain that perilous conflict; and this transient unanimity in a people so distracted by internal faction as the Lombards, is the surest witness to the justice of their undertaking. Sixty years afterwards, their war against the second Frederick had less of provocation and less of public spirit. It was, in fact, a party struggle of Guelf and Ghibelin cities, to which the names of the Church and the Empire gave more of dignity and consistence.

§ 15. The republics of Italy in the thirteenth century were so numerous and independent, and their revolutions so frequent, that it is a difficult matter to avoid confusion in following their history. It will give more arrangement to our ideas, and at the same time illustrate the changes that took place in these little states, if we consider them as divided into four clusters or constellations, not indeed unconnected one with another, yet each having its own centre of motion and its own boundaries. (1.) The first of these we may suppose formed of the cities in central Lombardy, between the Sessia and the Adige, the Alps and the Ligurian mountains; it comprehends Milan, Cremona, Pavia, Brescia, Bergamo, Parma, Piacenza, Mantua, Lodi, Alessandria, and several others less distinguished. These were the original seats of Italian liberty, the great movers in the wars of the elder Frederick. Milan was at the head of this cluster of cities, and her influence gave an ascendency to the Guelf party; she had, since the treaty of Constance, rendered Lodi and Pavia almost her subjects, and was in strict union with Brescia and Piacenza. Parma, however, and Cremona, were unshaken defenders of the Empire. (2.) In the second class we may place the cities of the march of Verona, between the Adige and the frontiers of Germany. Of these there were but four worth mentioning: Verona, Vicenza, Padua, and Treviso. The citizens of all the four were inclined to the Guelf interests; but a powerful body of rural nobility, who had never

been compelled, like those upon the upper Po, to quit their fortresses in the hilly country, or reside within the walls, attached themselves to the opposite denomination. Some of them obtained very great authority in the civil feuds of these four republics; and especially two brothers, Eccelin and Alberic da Romano, of a rich and distinguished family, known for its devotion to the Empire. By extraordinary vigor and decision of character, by dissimulation and breach of oaths, by the intimidating effects of almost unparalleled cruelty, Eccelin da Romano became after some years the absolute master of three cities—Padua, Verona, and Vicenza; and the Guelf party, in consequence, was entirely subverted beyond the Adige during the continuance of his tyranny. (3.) Another cluster was composed of the cities in Romagna: Bologna, Imola, Faenza, Ferrara, and several others. Of these Bologna was far the most powerful, and, as no city was more steadily for the interests of the Church, the Guelfs usually predominated in this class; to which, also, the influence of the house of Este not a little contributed. Modena, though not geographically within the limits of this division, may be classed along with it from her constant wars with Bologna. (4.) A fourth class will comprehend the whole of Tuscany, separated almost entirely from the politics of Lombardy and Romagna. Florence headed the Guelf cities in this province, Pisa the Ghibelin. The Tuscan union was formed by Innocent III., and was strongly inclined to the popes; but gradually the Ghibelin party acquired its share of influence; and the cities of Siena, Arezzo, and Lucca shifted their policy, according to external circumstances or the fluctuations of their internal factions. The petty cities in the region of Spoleto and Ancona hardly, perhaps, deserve the name of republics; and Genoa does not readily fall into any of our four classes, unless her wars with Pisa may be thought to connect her with Tuscany.[3]

§ 16. After several years of transient hostility and precarious truce, the Guelf cities of Lombardy engaged in a regular and protracted war with Frederick II., or more properly with their Ghibelin adversaries. Few events of this contest deserve particular notice. Neither party ever obtained such

[3] I have taken no notice of Piedmont in this division. The history of that country seems to be less elucidated by ancient or modern writers than that of other parts of Italy. It was at this time divided between the counts of Savoy and marquises of Montferrat. But Asti, Chieri, and Turin, especially the two former, appear to have had a republican form of government. They were, however, not absolutely independent. The only Piedmontese city that can properly be considered as a separate state, in the thirteenth century, was Vercelli, and even there the bishop seems to have possessed a sort of temporal sovereignty.

decisive advantages as had alternately belonged to Frederick Barbarossa and the Lombard confederacy during the war of the preceding century. A defeat of the Milanese by the emperor, at Corte Nuova, in 1237, was balanced by his unsuccessful siege at Brescia the next year. The Pisans assisted Frederick to gain a great naval victory over the Genoese fleet, in 1241; but he was obliged to rise from the blockade of Parma, which had left the standard of Ghibelinism, in 1248. Ultimately, however, the strength of the house of Suabia was exhausted by so tedious a struggle; the Ghibelins of Italy had their vicissitudes of success; but their country, and even themselves, lost more and more of the ancient connection with Germany.

In this resistance to Frederick II. the Lombards were much indebted to the constant support of Gregory IX. and his successor Innocent IV., and the Guelf or the Church party were used as synonymous terms. These pontiffs bore an unquenchable hatred to the house of Suabia. No concessions mitigated their animosity; no reconciliation was sincere. Whatever faults may be imputed to Frederick, it is impossible for any one, not blindly devoted to the Court of Rome, to deny that he was iniquitously proscribed by her unprincipled ambition. His real crime was the inheritance of his ancestors, and the name of the house of Suabia. In 1239 he was excommunicated by Gregory IX. To this he was tolerably accustomed by former experience; but the sentence was attended by an absolution of his subjects from their allegiance, and a formal deposition. These sentences were not very effective upon men of vigorous minds, or upon those whose passions were engaged in their cause; but they influenced both those who feared the threatenings of the clergy and those who wavered already as to their line of political conduct. In the fluctuating state of Lombardy the excommunication of Frederick undermined his interests even in cities like Parma, that had been friendly, and seemed to identify the cause of his enemies with that of religion—a prejudice artfully fomented by means of calumnies propagated against himself, and which the conduct of such leading Ghibelins as Eccelin, who lived in an open defiance of God and man, did not contribute to lessen. In 1240, Gregory proceeded to publish a crusade against Frederick, as if he had been an open enemy to religion; which he revenged by putting to death all the prisoners he made who wore the cross. There was one thing wanting to make the expulsion of the emperor from the Christian commonwealth more com-

plete. Gregory IX. accordingly projected, and Innocent IV. carried into effect, the convocation of a general council (A.D. 1245). This was held at Lyons, an imperial city, but over which Frederick could no longer retain his supremacy. In this assembly, where one hundred and forty prelates appeared, the question whether Frederick ought to be deposed was solemnly discussed; he submitted to defend himself by his advocates: and the pope, in the presence, though without formally collecting the suffrages of the council, pronounced a sentence, by which Frederick's excommunication was renewed, the empire and all his kingdoms taken away, and his subjects absolved from their fidelity. This is the most pompous act of usurpation in all the records of the Church of Rome; and the tacit approbation of a general council seemed to incorporate the pretended right of deposing kings, which might have passed as a mad vaunt of Gregory VII. and his successors, with the established faith of Christendom.

§ 17. Upon the death of Frederick II. in 1250, he left to his son Conrad a contest to maintain for every part of his inheritance, as well as for the imperial crown. But the vigor of the house of Suabia was gone; Conrad was reduced to fight for the kingdom of Naples, the only succession which he could hope to secure against the troops of Innocent IV., who still pursued his family with implacable hatred, and claimed that kingdom as forfeited to its feudal superior, the Holy See. After Conrad's premature death, which happened in 1254, the throne was filled by his illegitimate brother, Manfred, who retained it by his bravery and address, in despite of the popes, till they were compelled to call in the assistance of a more powerful arm.

The death of Conrad brings to a termination that period in Italian history which we have described as nearly co-extensive with the greatness of the house of Suabia. It is perhaps, upon the whole, the most honorable to Italy—that in which she displayed the most of national energy and patriotism. A Florentine or Venetian may dwell with pleasure upon later times, but a Lombard will cast back his eye across the desert of centuries, till it reposes on the field of Legnano.

§ 18. The successful resistance of the Lombard cities to such princes as both the Fredericks must astonish a reader who brings to the story of these Middle Ages notions derived from modern times. But when we consider not only the ineffectual control which could be exerted over a feudal army, bound only to a short term of service, and reluctantly kept in the field at its own cost, but the peculiar distrust and

disaffection with which many German princes regarded the house of Suabia, less reason will appear for surprise. Nor did the kingdom of Naples, almost always in agitation, yield any material aid to the second Frederick. The main cause, however, of that triumph which attended Lombardy was the intrinsic energy of a free government. From the eleventh century, when the cities became virtually republican, they put out those vigorous shoots which are the growth of freedom alone. Their domestic feuds, their mutual wars, the fierce assaults of their national enemies, checked not their strength, their wealth, or their population; but rather, as the limbs are nerved by labor and hardship, the republics of Italy grew in vigor and courage through the conflicts they sustained.

We have few authentic testimonies as to the domestic improvement of the free Italian cities, while they still deserve the name. But we may perceive by history that their power and population, according to their extent of territory, were almost incredible. In Galvaneus Flamma, a Milanese writer, we find a curious statistical account of that city in 1288, which, though of a date about thirty years after its liberties had been overthrown by usurpation, must be considered as implying a high degree of previous advancement, even if we make allowance, as probably we should, for some exaggeration. The inhabitants are reckoned at 200,000; the private houses 13,000; the nobility alone dwelt in sixty streets; 8000 gentlemen or heavy cavalry (milites) might be mustered from the city and its district, and 240,000 men capable of arms—a force sufficient, the writer observes, to crush all the Saracens. There were in Milan six hundred notaries, two hundred physicians, eighty school-masters, and fifty transcribers of manuscripts. In the district were one hundred and fifty castles with adjoining villages. At this period the territory of Milan was not, perhaps, more extensive than the county of Surrey; it was bounded at a little distance, on almost every side, by Lodi, or Pavia, or Bergamo, or Como. It is possible, however, that Flamma may have meant to include some of these as dependencies of Milan, though not strictly united with it. How flourishing must the state of cultivation have been in such a country, which not only drew no supplies from any foreign land, but exported part of her own produce! It was in the best age of their liberties, immediately after the battle of Legnano, that the Milanese commenced the great canal which conducts the waters of the Tesino to their capital, a work very extraordinary for

that time. During the same period the cities gave proofs of internal prosperity that in many instances have descended to our own observation in the solidity and magnificence of their architecture. Ecclesiastical structures were perhaps more splendid in France and England; but neither country could pretend to match the palaces and public buildings, the streets flagged with stone, the bridges of the same material, or the commodious private houses of Italy.

The courage of these cities was wrought sometimes to a tone of insolent defiance through the security inspired by their means of defense. From the time of the Romans to that when the use of gunpowder came to prevail, little change was made, or perhaps could be made, in that part of military science which relates to the attack and defense of fortified places. We find precisely the same engines of offense; the cumbrous towers, from which arrows were shot at the besieged, the machines from which stones were discharged, the battering-rams which assailed the walls, and the basket-work covering (the vinea or testudo of the ancients, and the gattus or chat-chateil of the Middle Ages) under which those who pushed the battering-engines were protected from the enemy. On the other hand, a city was fortified with a strong wall of brick or marble, with towers raised upon it at intervals, and a deep moat in front. Sometimes the antemural or barbacan was added—a rampart of less height, which impeded the approach of the hostile engines. The gates were guarded with a portcullis; an invention which, as well as the barbacan, was borrowed from the Saracens. With such advantages for defense, a numerous and intrepid body of burghers might not unreasonably stand at bay against a powerful army; and as the consequences of capture were most terrible, while resistance was seldom hopeless, we can not wonder at the desperate bravery of so many besieged towns. Indeed it seldom happened that one of considerable size was taken, except by famine or treachery.

§ 19. Of the government which existed in the republics of Italy during the twelfth and thirteenth centuries no definite sketch can be traced. The magistrates elected in almost all of them, when they first began to shake off the jurisdiction of their count or bishop, were styled *Consuls*—a word very expressive to an Italian ear, since, in the darkest ages, tradition must have preserved some acquaintance with the republican government of Rome. The consuls were always annual; and their office comprehended the command of the national militia in war, as well as the administration of jus-

tice and preservation of public order; but their number was various—two, four, six, or even twelve. In their legislative and deliberative councils the Lombards still copied the Roman constitution, or perhaps fell naturally into the form most calculated to unite sound discretion with the exercise of popular sovereignty. A council of trust and secrecy (della credenza) was composed of a small number of persons, who took the management of public affairs, and may be called the ministers of the state. But the decision upon matters of general importance, treaties of alliance or declarations of war, the choice of consuls or ambassadors, belonged to the general council. This appears not to have been uniformly constituted in every city; and according to its composition the government was more or less democratical. An ultimate sovereignty, however, was reserved to the mass of the people; and a Parliament or general assembly was held to deliberate on any change in the form of constitution.

About the end of the twelfth century a new and singular species of magistracy was introduced into the Lombard cities. During the tyranny of Frederick I. he had appointed officers of his own, called *Podestàs*, instead of the elective consuls. It is remarkable that this memorial of despotic power should not have excited insuperable alarm and disgust in the free republics. But, on the contrary, they almost universally, after the peace of Constance, revived an office which had been abrogated when they first rose in rebellion against Frederick. From experience, as we must presume, of the partiality which their domestic factions carried into the administration of justice, it became a general practice to elect, by the name of podestà, a citizen of some neighboring state as their general, their criminal judge, and preserver of the peace. The last duty was frequently arduous, and required a vigorous as well as an upright magistrate. Offenses against the laws and security of the commonwealth were during the Middle Ages as often, perhaps more often, committed by the rich and powerful than by the inferior class of society. The sentence of a magistrate against a powerful offender was not pronounced without danger of tumult; it was seldom executed without force. A convicted criminal was not, as at present, the stricken deer of society, whose disgrace his kindred shrink from participating, and whose memory they strive to forget. The law was to be enforced not against an individual, but a family—not against a family, but a faction—not perhaps against a local faction, but the whole Guelf or Ghibelin name, which might become inter-

ested in the quarrel. The podestà was to arm the republic against her refractory citizen; his house was to be besieged and razed to the ground, his defenders to be quelled by violence: and thus the people, become familiar with outrage and homicide under the command of their magistrates, were more disposed to repeat such scenes at the instigation of their passions.

The podestà was sometimes chosen in a general assembly, sometimes by a select number of citizens. His office was annual, though prolonged in peculiar emergencies. He was invariably a man of noble family, even in those cities which excluded their own nobility from any share in the government. He received a fixed salary, and was compelled to remain in the city after the expiration of his office for the purpose of answering such charges as might be adduced against his conduct. He could neither marry a native of the city, nor have any relation resident within the district, nor even, so great was their jealousy, eat or drink in the house of any citizen. The authority of these foreign magistrates was not by any means alike in all cities. In some he seems to have superseded the consuls, and commanded the armies in war. In others, as Milan and Florence, his authority was merely judicial. We find in some of the old annals the years headed by the names of the podestàs, as by those of the consuls in the history of Rome.

§ 20. The effects of the evil spirit of discord that had so fatally breathed upon the republics of Lombardy were by no means confined to national interests, or to the grand distinction of Guelf and Ghibelin. Dissensions glowed in the heart of every city, and as the danger of foreign war became distant, these grew more fierce and unappeasable. The feudal system had been established upon the principle of territorial aristocracy; it maintained the authority, it encouraged the pride of rank. Hence, when the rural nobility were compelled to take up their residence in cities, they preserved the ascendency of birth and riches. From the natural respect which is shown to these advantages, all offices of trust and command were shared among them; it is not material whether this were by positive right or continual usage. A limited aristocracy of this description, where the inferior citizens possess the right of selecting their magistrates by free suffrage from a numerous body of nobles, is not among the worst forms of government, and affords no contemptible security against oppression and anarchy. This regimen appears to have prevailed in most of the Lombard cities dur-

ing the eleventh and twelfth centuries; but gradually dissensions arose between the nobility and the plebeian burgesses, which at length broke out into civil war in most of the Italian cities. About the year 1220 the question of aristocratical or popular command was tried by arms in Milan, Piacenza, Modena, Cremona, and Bologna.

There is a natural preponderance in the popular scale, which, in a fair trial, invariably gains on that of the less numerous class. The artisans, who composed the bulk of the population, were arranged in companies according to their occupations. Sometimes, as at Milan, they formed separate associations, with rules for their internal government. The clubs, called at Milan la Motta and la Credenza, obtained a degree of weight not at all surprising to those who consider the spirit of mutual attachment which belongs to such fraternities; and we shall see a more striking instance of this hereafter in the republic of Florence. To so formidable and organized a democracy the nobles opposed their numerous families, the generous spirit that belongs to high birth, the influence of wealth and established name. The members of each distinguished family appear to have lived in the same street; their houses were fortified with square massive towers of commanding height, and wore the semblance of castles within the walls of a city. Brancaleon, the famous senator of Rome, destroyed one hundred and forty of these domestic intrenchments, which were constantly serving the purpose of civil broils and outrage. Expelled, as frequently happened, from the city, it was in the power of the nobles to avail themselves of their superiority in the use of cavalry, and to lay waste the district, till weariness of an unprofitable contention reduced the citizens to terms of compromise. But when all these resources were ineffectual, they were tempted or forced to sacrifice the public liberty to their own welfare, and lent their aid to a foreign master or a domestic usurper.

In all these scenes of turbulence, whether the contest was between the nobles and people, or the Guelf and Ghibelin factions, no mercy was shown by the conquerors. The vanquished lost their homes and fortunes, and, retiring to other cities of their own party, waited for the opportunity of revenge. In a popular tumult the houses of the beaten side were frequently levelled to the ground—not perhaps from a sort of senseless fury, which Muratori inveighs against, but on account of the injury which these fortified houses inflicted upon the lower citizens. The most deadly hatred is that

which men exasperated by proscription and forfeiture bear to their country; nor have we need to ask any other cause for the calamities of Italy than the bitterness with which an unsuccessful faction was thus pursued into banishment. When the Ghibelins were returning to Florence, after a defeat given to the prevailing party in 1260, it was proposed among them to demolish the city itself which had cast them out; and, but for the persuasion of one man, Farinata degl' Uberti, their revenge would have thus extinguished all patriotism.[4] It is to this that we must ascribe their proneness to call in assistance from every side, and to invite any servitude for the sake of retaliating upon their adversaries.

Independently of the two leading differences which embattled the citizens of an Italian state, their form of government and their relation to the empire, there were others more contemptible though not less mischievous. In every city the quarrels of private families became the foundation of general schism, sedition, and proscription. Sometimes these blended themselves with the grand distinctions of Guelf and Ghibelin; sometimes they were more nakedly conspicuous. Thus an outrage committed at Pistoja in 1300 split the inhabitants into the parties of Bianchi and Neri; and these, spreading to Florence, created one of the most virulent divisions which annoyed that republic. In one of the changes which attended this little ramification of faction, Florence expelled a young citizen who had borne offices of magistracy, and espoused the cause of the Bianchi. Dante Alighieri retired to the courts of some Ghibelin princes, where his sublime and inventive mind, in the gloom of exile, completed that original combination of vast and extravagant conceptions with keen political satire, which has given immortality to his name, and even lustre to the petty contests of his time.

In the earlier stages of the Lombard republics their differences, as well mutual as domestic, had been frequently appeased by the mediation of the emperors; and the loss of this salutary influence may be considered as no slight evil attached to that absolute emancipation which Italy attained in the thirteenth century. The popes sometimes endeavored to interpose an authority which, though not quite so direct, was held in greater veneration; and if their own tempers had been always pure from the selfish and vindictive pas-

[4] I can not forgive Dante for placing this patriot trà l'anime più nere, in one of the worse regions of his Inferno. The conversation of the poet with Farinata, cant. 10, is very fine, and illustrative of Florentine history.

sions of those whom they influenced, might have produced more general and permanent good. But they considered the Ghibelins as their own peculiar enemies, and the triumph of the opposite faction as the Church's best security. Gregory X. and Nicholas III., whether from benevolent motives, or because their jealousy of Charles of Anjou, while at the head of the Guelfs, suggested the revival of a Ghibelin party as a counterpoise to his power, distinguished their pontificate by enforcing measures of reconciliation in all Italian cities; but their successors returned to the ancient policy and prejudices of Rome.

PART II.

§ 1. State of Italy after the Extinction of the House of Suabia. § 2. Conquest of Naples by Charles of Anjou. § 3. The Lombard Republics become severally subject to Princes or Usurpers. § 4. The Visconti of Milan. Their Aggrandizement. 5. Decline of the Imperial Authority over Italy. § 6. Internal State of Rome. § 7. Rienzi. § 8. Florence. § 9. Her Forms of Government. Constitution of 1266. § 10. Struggles between the Nobility and the People. The Ordinances of Justice. § 11. Despotism of the Duke of Athens. § 12. Rule of the Guelf Society. § 13. Revolutions in Florence. § 14. Territory of Florence. § 15. Conquest of Pisa. Pisa: its Commerce, Naval Wars with Genoa, and Decay. § 16. Genoa. Her Contentions with Venice. War of Chioggio. § 17. Government of Genoa. 18. Venice. Her Origin and Prosperity. § 19. Venetian Government. Its Vices. § 20. Territorial Conquests of Venice. § 21. Military System of Italy. § 22. Companies of Adventure. 1. Foreign: Guarnieri, Hawkwood; and 2. Native; Braccio. Sforza. § 23. Improvements in Military Service. Arms, offensive and defensive. Invention of Gunpowder. § 24. Naples. Sicilian Vespers. First Line of Anjou. § 25. Charles II. Robert. Joanna I. § 26. Ladislaus. § 27. Joanna II. § 28. Alfonso, king of Naples. § 29. State of Italy during the Fifteenth Century. § 30. Florence. Rise of the Medici, and Ruin of their Adversaries. § 31. Lorenzo de' Medici. § 32. Pretensions of Charles VIII. to Naples.

§ 1. FROM the death of Frederick II. in 1250, to the invasion of Charles VIII. in 1494, a long and undistinguished period occurs, which it is impossible to break into any natural divisions. It is an age in many respects highly brilliant—the age of poetry and letters, of art, and of continual improvement. Italy displayed an intellectual superiority in this period over the Transalpine nations which certainly had not appeared since the destruction of the Roman Empire. But her political history presents a labyrinth of petty facts so obscure and of so little influence as not to arrest the attention, so intricate and incapable of classification as to leave only confusion in the memory. The general events that are worthy of notice, and give a character to this long period, are the establishment of small tyrannies upon the ruins of

republican government in most of the cities, the gradual rise of three considerable states, Milan, Florence, and Venice, the naval and commercial rivalry between the last city and Genoa, the final acquisition by the popes of their present territorial sovereignty, and the revolutions in the kingdom of Naples under the lines of Anjou and Aragon.

After the death of Frederick II. the distinctions of Guelf and Ghibelin became destitute of all rational meaning. The most odious crimes were constantly perpetrated, and the utmost miseries endured, for an echo and a shade that mocked the deluded enthusiasts of faction. None of the Guelfs denied the nominal but indefinite sovereignty of the empire; and beyond a name the Ghibelins themselves would have been little disposed to carry it. But the virulent hatreds attached to these words grew continually more implacable, till ages of ignominy and tyrannical government had extinguished every energetic passion in the bosoms of a degraded people.

§ 2. In the fall of the house of Suabia, Rome appeared to have consummated her triumph. She gained a still further ascendency by the change of dynasty in Naples. This kingdom had been occupied, after the death of Conrad, by his illegitimate brother, Manfred, in the behalf, as he at first pretended, of young Conradin the heir, but in fact as his own acquisition. He was a prince of an active and firm mind, well fitted for his difficult post, to whom the Ghibelins looked up as their head, and as the representative of his father. It was a natural object with the popes, independently of their ill-will towards a son of Frederick II., to see a sovereign upon whom they could better rely placed upon so neighboring a throne. Charles, count of Anjou, brother of St. Louis, was tempted by them to lead a crusade (for as such all wars for the interest of Rome were now considered) against the Neapolitan usurper (A.D. 1265). The chance of a battle decided the fate of Naples, and had a striking influence upon the history of Europe for several centuries. Manfred was killed in the field; but there remained the legitimate heir of the Fredericks, a boy of seventeen years old, Conradin, son of Conrad, who rashly, as we say at least after the event, attempted to regain his inheritance. He fell into the hands of Charles, and the voice of those rude ages, as well as of a more enlightened posterity, has united in branding with everlasting infamy the name of that prince, who did not hesitate to purchase the security of his own title by the public execution of an honorable competitor, or rather a rightful

claimant of the throne he had usurped (A.D. 1268). With Conradin the house of Suabia was extinguished; but Constance, the daughter of Manfred, had transported *his* right to Sicily and Naples into the house of Aragon, by her marriage with Peter III.

This success of a monarch selected by the Roman pontiffs as their particular champion turned the tide of faction over all Italy. He expelled the Ghibelins from Florence, of which they had a few years before obtained a complete command by means of their memorable victory upon the River Arbia. After the fall of Conradin that party was everywhere discouraged. Germany held out small hopes of support, even when the imperial throne, which had long been vacant, should be filled by one of her princes. The populace were in almost every city attached to the Church and to the name of Guelf; the kings of Naples employed their arms, and the popes their excommunications; so that for the remainder of the thirteenth century the name of Ghibelin was a term of proscription in the majority of Lombard and Tuscan republics. Charles was constituted by the pope vicar-general in Tuscany. This was a new pretension of the Roman pontiffs, to name the lieutenants of the Empire during its vacancy, which indeed could not be completely filled up without their consent. It soon, however, became evident that he aimed at the sovereignty of Italy. Some of the popes themselves, Gregory X. and Nicholas IV., grew jealous of their own creature.

§ 3. Almost all the Lombard republics had, by force, or stratagem, or free consent, already fallen under the yoke of some leading citizens, who became the lord (signore) or, in the German sense, tyrant of his country. The first instance of a voluntary delegation of sovereignty was that of Ferrara, which placed itself under the lord of Este. Eccelin made himself truly the tyrant of the cities beyond the Adige; and such experience ought naturally to have inspired the Italians with more universal abhorrence of despotism. But every danger appeared trivial in the eyes of exasperated factions when compared with the ascendency of their adversaries. Weary of unceasing and useless contests, in which ruin fell with an alternate but equal hand upon either party, liberty withdrew from a people who disgraced her name; and the tumultuous, the brave, the intractable Lombards, became eager to submit themselves to a master, and patient under the heaviest oppression. Or, if tyranny sometimes overstepped the limits of forbearance, and a seditious rising ex-

pelled the reigning prince, it was only to produce a change of hands, and transfer the impotent people to a different, and perhaps a worse despotism. In many cities not a conspiracy was planned, not a sigh was breathed, in favor of republican government, after once they had passed under the sway of a single person. The progress, indeed, was gradual, though sure, from limited to absolute, from temporary to hereditary power, from a just and conciliating rule to extortion and cruelty. But before the middle of the fourteenth century at the latest, all those cities which had spurned at the faintest mark of submission to the emperors lost even the recollection of self-government, and were bequeathed, like an undoubted patrimony, among the children of their new lords. Such is the progress of usurpation, and such the vengeance that Heaven reserves for those who waste in license and faction its first of social blessings, liberty.

§ 4. The city most distinguished, in both wars against the house of Suabia, for an unconquerable attachment to republican institutions, was the first to sacrifice them in a few years after the death of Frederick II. Milan had for a considerable time been agitated by civil dissensions between the nobility and inferior citizens. These parties were pretty equally balanced, and their success was consequently alternate. Each had its own podestà, as a party leader, distinct from the legitimate magistrate of the city. In consequence of the crime of a nobleman, who had murdered one of his creditors, the two parties took up arms in 1257. A civil war, of various success, and interrupted by several pacifications, which in that unhappy temper could not be durable, was terminated in about two years by the entire discomfiture of the aristocracy, and by the election of Martin della Torre as chief and lord (capitano e signore) of the people. Though the Milanese did not, probably, intend to renounce the sovereignty resident in their general assemblies, yet they soon lost the republican spirit: five in succession of the family della Torre might be said to reign in Milan; each indeed by a formal election, but with an implied recognition of a sort of hereditary title. Twenty years afterwards the Visconti, a family of opposite interests, supplanted the Torriani at Milan; and the rivalry between these great houses was not at an end till the final establishment of Matteo Visconti in 1313; but the people were not otherwise considered than as aiding by force the one or other party, and at most deciding between the pretensions of their masters.

The vigor and concert infused into the Guelf party by the

successes of Charles of Anjou was not very durable. That prince was soon involved in a protracted and unfortunate quarrel with the kings of Aragon, to whose protection his revolted subjects in Italy had recurred. On the other hand, several men of energetic character retrieved the Ghibelin interests in Lombardy, and even in the Tuscan cities. The Visconti were acknowledged heads of that faction. A family early established as lords of Verona, the della Scala, maintained the credit of the same denomination between the Adige and the Adriatic. The inferior tyrants were partly Guelf, partly Ghibelin, according to local revolutions; but, upon the whole, the latter acquired a gradual ascendency. Those, indeed, who cared for the independence of Italy, or for their own power, had far less to fear from the phantom of imperial prerogatives, long intermitted and incapable of being enforced, than from the new race of foreign princes whom the Church had substituted for the house of Suabia. The Angevin kings of Naples were sovereigns of Provence, and from thence easily encroached upon Piedmont, and threatened the Milanese. Robert, the third of this line, almost openly aspired, like his grandfather Charles I., to a real sovereignty over Italy. His offers of assistance to Guelf cities in war were always coupled with a demand of the sovereignty. Many yielded to his ambition; and even Florence twice bestowed upon him a temporary dictatorship. In 1314 he was acknowledged lord of Lucca, Florence, Pavia, Alessandria, Bergamo, and the cities of Romagna. In 1318 the Guelfs of Genoa found no other resource against the Ghibelin emigrants who were under their walls than to resign their liberties to the King of Naples for the term of ten years, which he procured to be renewed for six more. The Avignon popes, especially John XXII., out of blind hatred to the Emperor Louis of Bavaria and the Visconti family, abetted all these measures of ambition. But they were rendered abortive by Robert's death, and the subsequent disturbances of his kingdom.

At the latter end of the thirteenth century there were almost as many princes in the north of Italy as there had been free cities in the preceding age. Their equality, and the frequent domestic revolutions which made their seat unsteady, kept them for a while from encroaching on each other. Gradually, however, they became less numerous: a quantity of obscure tyrants were swept away from the smaller cities; and the people, careless or hopeless of liberty, were glad to change the rule of despicable petty usurpers for that of

more distinguished and powerful families. About the year 1350 the central parts of Lombardy had fallen under the dominion of the Visconti. Four other houses occupied the second rank; that of Este at Ferrara and Modena; of Scala at Verona, of Carrara at Padua, which later than any Lombard city had resigned her liberty; and of Gonzaga at Mantua, which, without ever obtaining any material extension of territory, continued, probably for that reason, to reign undisturbed till the eighteenth century. But these united were hardly a match, as they sometimes experienced, for the Visconti. That family, the object of every league formed in Italy for more than fifty years, in constant hostility to the Church, and well inured to interdicts and excommunications, producing no one man of military talents, but fertile of tyrants detested for their perfidiousness and cruelty, was nevertheless enabled, with almost uninterrupted success, to add city after city to the dominion of Milan, till it absorbed all the north of Italy. Under Gian Galeazzo, whose reign began in 1385, the viper (their armorial bearing) assumed indeed a menacing attitude:[1] he overturned the great family of Scala, and annexed their extensive possessions to his own; no power intervened from Vercelli, in Piedmont, to Feltre and Belluno; while the free cities of Tuscany, Pisa, Siena, Perugia, and even Bologna, as if by a kind of witchcraft, voluntarily called in a dissembling tyrant as their master. At length the Visconti were tacitly admitted among the reigning princes, by the erection of Milan into a duchy under letters patent of the Emperor Wenceslaus (A.D. 1295).

§ 5. The imperial authority over Italy was almost entirely suspended after the death of Frederick II. A long interregnum followed in Germany; and when the vacancy was supplied by Rodolph of Hapsburg (A.D. 1272), he was too prudent to dissipate his moderate resources where the great house of Suabia had failed. About forty years afterwards the emperor, Henry VII., of Luxemburg (A.D. 1308), a prince, like Rodolph, of small hereditary possessions, but active and discreet, availed himself of the ancient respect borne to the imperial name, and the mutual jealousies of the Italians, to recover for a very short time a remarkable influence. But, though professing neutrality and desire of union between the Guelfs and Ghibelins, he could not succeed in removing the disgust of the former; his exigencies impelled him to large

[1] Allusions to heraldry are very common in the Italian writers. All the historians of the fourteenth century habitually use the viper, il biscione, as a synonym for the power of Milan.

demands of money; and the Italians, when they counted his scanty German cavalry, perceived that obedience was altogether a matter of their own choice. Henry died, however, in time to save himself from any decisive reverse. His successors, Louis of Bavaria and Charles IV., descended from the Alps with similar motives, but after some temporary good-fortune were obliged to return, not without discredit. Yet the Italians never broke that almost invisible thread which connected them with Germany; the fallacious name of Roman emperor still challenged their allegiance, though conferred by seven Teutonic electors without their concurrence. Even Florence, the most independent and high-spirited of republics, was induced to make a treaty with Charles IV. in 1355, which, while it confirmed all her actual liberties, not a little, by that very confirmation, affected her sovereignty. This deference to the supposed prerogatives of the Empire, even while they were least formidable, was partly owing to jealousy of French or Neapolitan interference, partly to the national hatred of the popes who had seceded to Avignon, and in some degree to a misplaced respect for antiquity, to which the revival of letters had given birth. The great civilians, and the much greater poets, of the fourteenth century, taught Italy to consider her emperor as a dormant sovereign, to whom her various principalities and republics were subordinate, and during whose absence alone they had legitimate authority.

In one part, however, of that country, the Empire had, soon after the commencement of this period, spontaneously renounced its sovereignty. From the era of Pepin's donation, confirmed and extended by many subsequent charters, the Holy See had tolerably just pretensions to the province entitled Romagna, or the exarchate of Ravenna. But the popes, whose menaces were dreaded at the extremities of Europe, were still very weak as temporal princes. Even Innocent III. had never been able to obtain possession of this part of St. Peter's patrimony. The circumstances of Rodolph's accession inspired Nicholas III. with more confidence. That emperor granted a confirmation of every thing included in the donations of Louis I., Otho, and his other predecessors, but was still reluctant or ashamed to renounce his imperial rights. Accordingly, his charter is expressed to be granted without diminution of the Empire (sine demembratione imperii); and his chancellor received an oath of fidelity from the cities of Romagna. But the pope insisting firmly on his own claim, Rodolph discreetly avoided involving himself in

a fatal quarrel, and, in 1278, absolutely released the imperial supremacy over all the dominions already granted to the Holy See.

§ 6. This is a leading epoch in the temporal monarchy of Rome. But she stood only in the place of the emperor; and her ultimate sovereignty was compatible with the practicable independence of the free cities, or of the usurpers who had risen up among them. Bologna, Faenza, Rimini, and Ravenna, with many others less considerable, took an oath, indeed, to the pope, but continued to regulate both their internal concerns and foreign relations at their own discretion. The first of these cities was far pre-eminent above the rest for population and renown, and, though not without several intermissions, preserved a republican character to the end of the fourteenth century. The rest were soon enslaved by petty tyrants, more obscure than those of Lombardy. It was not easy for the pontiffs of Avignon to reinstate themselves in a dominion which they seem to have abandoned; but they made several attempts to recover it, sometimes with spiritual arms, sometimes with the more efficacious aid of mercenary troops. The annals of this part of Italy are peculiarly uninteresting.

Rome itself was, throughout the Middle Ages, very little disposed to acquiesce in the government of her bishop. His rights were indefinite, and unconfirmed by positive law; the emperor was long sovereign; the people always meant to be free. Besides the common causes of insubordination and anarchy among the Italians, which applied equally to the capital city, other sentiments more peculiar to Rome preserved a continual though not uniform influence for many centuries. There still remained enough in the wreck of that vast inheritance to swell the bosoms of her citizens with a consciousness of their own dignity. They bore the venerable name, they contemplated the monuments of art and empire, and forgot, in the illusions of national pride, that the tutelar gods of the building were departed forever. About the middle of the twelfth century these recollections were heightened by the eloquence of Arnold of Brescia, a political heretic who preached against the temporal jurisdiction of the hierarchy. In a temporary intoxication of fancy, they were led to make a ridiculous show of self-importance towards Frederick Barbarossa, when he came to receive the imperial crown; but the German sternly chided their ostentation, and chastised their resistance. With the popes they could deal more securely. Several of them were expelled from Rome

during that age by the seditious citizens. Lucius II. died of hurts received in a tumult. The government was vested in fifty-six Senators, annually chosen by the people through the intervention of an electoral body, ten delegates from each of the thirteen districts of the city. This constitution lasted not quite fifty years. In 1192 Rome imitated the prevailing fashion by the appointment of an annual foreign magistrate. Except in name, the Senator of Rome appears to have perfectly resembled the podestà of other cities. This magistrate superseded the representative Senate, who had proved by no means adequate to control the most lawless aristocracy of Italy. I shall not repeat the story of Brancaleon's rigorous and inflexible justice, which a great historian has already drawn from obscurity. It illustrates not the annals of Rome alone, but the general state of Italian society, the nature of a podestà's duty, and the difficulties of its execution. In the twelfth and thirteenth centuries the Senate, and the Senator who succeeded them, exercised one distinguishing attribute of sovereignty, that of coining gold and silver money. Some of their coins still exist, with legends in a very republican tone. Doubtless the temporal authority of the popes varied according to their personal character. Innocent III. had much more than his predecessors for almost a century, or than some of his successors. He made the Senator take an oath of fealty to him, which, though not very comprehensive, must have passed in those times as a recognition of his superiority.

§ 7. Though there was much less obedience to any legitimate power at Rome than anywhere else in Italy, even during the thirteenth century, yet, after the secession of the popes to Avignon, their own city was left in a far worse condition than before. Disorders of every kind, tumult and robbery, prevailed in the streets. The Roman nobility were engaged in perpetual war with each other. Not content with their own fortified palaces, they turned the sacred monuments of antiquity into strongholds, and consummated the destruction of time and conquest. At no period has the city endured such irreparable injuries; nor was the downfall of the Western Empire so fatal to its capital as the contemptible feuds of the Orsini and Colonna families. Whatever there was of government, whether administered by a legate from Avignon or by the municipal authorities, had lost all hold on these powerful barons. In the midst of this degradation and wretchedness, an obscure man, Nicola di Rienzi, conceived the project of restoring Rome, not only to good

order, but even to her ancient greatness (A.D. 1347). He had received an education beyond his birth, and nourished his mind with the study of the best writers. After many harangues to the people, which the nobility, blinded by their self-confidence, did not attempt to repress, Rienzi suddenly excited an insurrection, and obtained complete success. He was placed at the head of a new government, with the title of Tribune, and with almost unlimited power. The first effects of this revolution were wonderful. All the nobles submitted, though with great reluctance; the roads were cleared of robbers; tranquillity was restored at home; some severe examples of justice intimidated offenders; and the tribune was regarded by all the people as the destined restorer of Rome and Italy. Though the Court of Avignon could not approve of such an usurpation, it temporized enough not directly to oppose it. Most of the Italian republics, and some of the princes, sent ambassadors, and seemed to recognize pretensions which were tolerably ostentatious. The King of Hungary and Queen of Naples submitted their quarrel to the arbitration of Rienzi, who did not, however, undertake to decide upon it. But this sudden exaltation intoxicated his understanding, and exhibited failings entirely incompatible with his elevated condition. If Rienzi had lived in our own age, his talents, which were really great, would have found their proper orbit; for his character was one not unusual among literary politicians—a combination of knowledge, eloquence, and enthusiasm for ideal excellence, with vanity, inexperience of mankind, unsteadiness, and physical timidity. As these latter qualities became conspicuous, they eclipsed his virtues and caused his benefits to be forgotten; he was compelled to abdicate his government, and retire into exile. After several years, some of which he passed in the prisons of Avignon, Rienzi was brought back to Rome, with the title of Senator, and under the command of the legate. It was supposed that the Romans, who had returned to their habits of insubordination, would gladly submit to their favorite tribune. And this proved the case for a few months: but after that time they ceased altogether to respect a man who so little respected himself in accepting a station where he could no longer be free; and Rienzi was killed in a sedition.[1]

Once more, not long after the death of Rienzi, the freedom

[1] An illustrious female writer has drawn with a single stroke the character of Rienzi, Crescentius, and Arnold of Brescia, the fond restorers of Roman liberty, *qui ont pris les souvenirs pour les espérances.* Corinne, t. i., p. 159. Could Tacitus have excelled this?

of Rome seems to have revived in republican institutions, though with names less calculated to inspire peculiar recollections. Magistrates called bannerets, chosen from the thirteen districts of the city, with a militia of three thousand citizens at their command, were placed at the head of this commonwealth. The great object of this new organization was to intimidate the Roman nobility, whose outrages, in the total absence of government, had grown intolerable. Several of them were hanged the first year by order of the bannerets. In 1435 the Romans formally took away the government from Eugenius IV., and elected seven seigniors or chief magistrates, like the priors of Florence. But this revolution was not of long continuance, and the citizens soon after acknowledged the sovereignty of the pope.

§ 8. The province of Tuscany continued longer than Lombardy under the government of an imperial lieutenant. It was not till about the middle of the twelfth century that the cities of Florence, Lucca, Pisa, Siena, Arezzo, Pistoja, and several less considerable, which might, perhaps, have already their own elected magistrates, became independent republics. During the reign of Frederick II., Florence became, as far as she was able, an ally of the popes. There was, indeed, a strong Ghibelin party, comprehending many of the greatest families, but the spirit of the people was thoroughly Guelf. After several revolutions, accompanied by alternate proscription and demolition of houses, the Guelf party, through the assistance of Charles of Anjou, obtained a final ascendency in 1266; and after one or two unavailing schemes of accommodation it was established as a fundamental law in the Florentine constitution that no person of Ghibelin ancestry could be admitted to offices of public trust, which, in such a government, was in effect an exclusion from the privileges of citizenship.

The changes of internal government and vicissitudes of success among factions were so frequent at Florence, for many years after this time, that she is compared by her great banished poet to one in sickness, who, unable to rest, gives herself momentary ease by continual change of posture in her bed. They did not become much less numerous after the age of Dante. Yet the revolutions of Florence should, perhaps, be considered as no more than a necessary price of her liberty. It was her boast and her happiness to have escaped, except for one short period, that odious rule of vile usurpers, under which so many other free cities had been crushed. A sketch of the constitution of so famous a republic

ought not to be omitted in this place. Nothing else in the history of Italy after Frederick II. is so worthy of our attention.

§ 9. The basis of the Florentine polity was a division of the citizens exercising commerce into their several companies or *arts*. These were at first twelve: seven called the greater arts, and five lesser; but the latter were gradually increased to fourteen. The seven greater arts were those of lawyers and notaries, of dealers in foreign cloth, called sometimes Calimala, of bankers or money-changers, of woollen-drapers, of physicians and druggists, of dealers in silk, and of furriers. The inferior arts were those of retailers of cloth, butchers, smiths, shoe-makers, and builders. This division was fully established and rendered essential to the constitution in 1266. By the provisions made in that year each of the seven greater arts had a council of its own, a chief magistrate or consul, who administered justice in civil causes to all members of his company, and a banneret (gonfaloniere) or military officer, to whose standard they repaired when any attempt was made to disturb the peace of the city.

The administration of criminal justice belonged at Florence, as at other cities, to a foreign *Podestà*, or rather to two foreign magistrates, the *Podestà* and the *Capitano del popolo*, whose jurisdiction appears to have been concurrent. These offices were preserved till the innovations of the Medici. The domestic magistracies underwent more changes. Instead of consuls, which had been the first denomination of the chief magistrates of Florence, a college of twelve or fourteen persons called *Anziani* or *Buonuomini*, but varying in name as well as number, according to revolutions of party, was established about the middle of the thirteenth century, to direct public affairs. This order was entirely changed in 1282, and gave place to a new form of supreme magistracy, which lasted till the extinction of the republic. Six *Priors*, elected every two months, one from each of the six quarters of the city, and from each of the greater arts, except that of lawyers, constituted an executive magistracy. They lived during their continuance in office in a palace belonging to the city, and were maintained at the public cost. The actual priors, jointly with the chiefs and councils (usually called *la Capitudine*) of the seven greater arts, and with certain adjuncts (*arroti*) named by themselves, elected by ballot their successors. Such was the practice for about forty years after this government was established. But an innovation, begun in 1324, and perfected four years afterwards, gave a peculiar character to the constitution of Florence. A lively

and ambitious people, not merely jealous of their public sovereignty, but deeming its exercise a matter of personal enjoyment, aware at the same time that the will of the whole body could neither be immediately expressed on all occasions, nor even through chosen representatives, without the risk of violence and partiality, fell upon the singular idea of admitting all citizens not unworthy by their station or conduct to offices of magistracy by rotation. Lists were separately made out by the priors, the twelve buonuomini, the chiefs and councils of arts, the bannerets and other respectable persons, of all citizens, Guelfs by origin, turned of thirty years of age, and, in their judgment, worthy of public trust. The lists thus formed were then united, and those who had composed them, meeting together, in number ninety-seven, proceeded to ballot upon every name. Whoever obtained sixty-eight *black* balls was placed upon the reformed list; and all the names it contained being put on separate tickets into a bag or purse (imborsati), were drawn successively as the magistracies were renewed. As there were above fifty of these, none of which could be held for more than four months, several hundred citizens were called in rotation to bear their share in the government within two years. But at the expiration of every two years the scrutiny was renewed, and fresh names were mingled with those which still continued undrawn; so that accident might deprive a man for life of his portion of magistracy.

Four councils had been established by the constitution of 1266 for the decision of all propositions laid before them by the executive magistrates, whether of a legislative nature or relating to public policy. These were now abrogated; and in their places were substituted one of 300 members, all plebeians, called consiglio di popolo, and one of 250, called consiglio di commune, into which the nobles might enter. These were changed by the same rotation as the magistracies, every four months. A Parliament, or general assembly of the Florentine people, was rarely convoked; but the leading principle of a democratical republic, the ultimate sovereignty of the multitude, was not forgotten. This constitution of 1324 was fixed by the citizens at large in a Parliament; and the same sanction was given to those temporary delegations of the seigniory to a prince which occasionally took place. What is technically called by their historians *farsi popolo* was the assembly of a Parliament, or a resolution of all derivative powers into the immediate operation of the popular will.

The ancient government of this republic appears to have been chiefly in the hands of its nobility. These were very numerous, and possessed large estates in the district. But by the constitution of 1266, which was nearly coincident with the triumph of the Guelf faction, the essential powers of magistracy as well as of legislation were thrown into the scale of the commons. The colleges of arts, whose functions became so eminent, were altogether commercial, and it was necessary to belong to one or other of the greater arts in order to be admitted into the executive college of the priors. Many, indeed, of the nobles enrolled themselves in these companies, and were among the most conspicuous merchants of Florence; but the majority of the ancient families saw themselves pushed aside from the helm, which was intrusted to a class whom they had habitually held in contempt.

§ 10. The nobility, however, set the new constitution at defiance, and dwelling in strong and lofty houses among their kindred, and among the fellows of their rank, committed all sorts of outrages with impunity. At length in 1295, Giano della Bella, a man of ancient lineage, but attached to the popular side, introduced a series of enactments exceedingly disadvantageous to the ancient aristocracy. The first of these was the appointment of an executive officer, the gonfalonier of justice, whose duty it was to enforce the sentences of the podestà and capitano del popolo in cases where the ordinary officers were insufficient. A thousand citizens, afterwards increased to four times that number, were bound to obey his commands. They were distributed into companies, the gonfaloniers or captains of which became a sort of corporation or college, and a constituent part of the Government. This new militia seems to have superseded that of the companies of arts. The gonfalonier of justice was part of the seigniory along with the priors, of whom he was reckoned the president, and changed, like them, every two months. He was, in fact, the first magistrate of Florence. If Giano della Bella had trusted to the efficacy of this new security for justice, his fame would have been beyond reproach. But he followed it up by harsher provisions. The nobility were now made absolutely ineligible to the office of prior. For an offense committed by one of a noble family, his relations were declared responsible in a penalty of 3000 pounds. And, to obviate the difficulty arising from the frequent intimidation of witnesses, it was provided that common fame, attested by two credible persons, should be sufficient for the condemnation of a nobleman.

These are the famous ordinances of justice which passed at Florence for the great charter of her democracy.

The nobility were soon aware of the position in which they stood. For half a century their great object was to procure the relaxation of the ordinances of justice. But they had no success with an elated enemy. The sort of proscription which attended the ancient nobles lowered their spirit; while a new aristocracy began to raise its head, the aristocracy of families, who, after filling the highest magistracies for two or three generations, obtained an hereditary importance, which answered the purpose of more unequivocal nobility; just as in ancient Rome plebeian families, by admission to curule offices, acquired the character and appellation of nobility, and were only distinguishable by their genealogy from the original patricians. Florence had her plebeian nobles (popolani grandi) as well as Rome; the Peruzzi, the Ricci, the Albizi, the Medici, correspond to the Catos, the Pompeys, the Brutuses, and the Antonies. But at Rome the two orders, after an equal partition of the highest offices, were content to respect their mutual privileges; at Florence the commoners preserved a rigorous monopoly, and the distinction of high birth was, that it debarred men from political franchises and civil justice.

This second aristocracy did not obtain much more of the popular affection than that which it superseded. In order to keep the nobles under more control the governing party more than once introduced a new foreign magistrate, with the title of captain of defense (della guardia), whom they invested with an almost unbounded criminal jurisdiction. One Gabrielli of Agobbio was twice fetched for this purpose (A.D. 1336, 1340); and in each case he behaved in so tyrannical a manner as to occasion a tumult. His office, however, was of short duration, and the title at least did not import a sovereign command. But very soon afterwards Florence had to experience one taste of a cup which her neighbors had drunk off to the dregs, and to animate her magnanimous love of freedom by a knowledge of the calamities of tyranny.

§ 11. A war with Pisa, unsuccessfully, if not unskillfully, conducted, gave rise to such dissatisfaction in the city that the leading commoners had recourse to an appointment something like that of Gabrielli, and from similar motives. Walter de Brienne, duke of Athens, was descended from one of the French Crusaders who had dismembered the Grecian empire in the preceding century; but his father, defeated in battle, had lost the principality along with his life, and the

titular duke was an adventurer in the Court of France. He had been, however, slightly known at Florence on a former occasion. There was an uniform maxim among the Italian republics that extraordinary powers should be conferred upon none but strangers. The Duke of Athens was accordingly pitched upon for the military command, which was united with domestic jurisdiction. This appears to have been promoted by the governing party in order to curb the nobility; but they were soon undeceived in their expectations. The first act of the Duke of Athens was to bring four of the most eminent commoners to capital punishment for military offenses. These sentences, whether just or otherwise, gave much pleasure to the nobles, who had so frequently been exposed to similar severity, and to the populace, who are naturally pleased with the humiliation of their superiors. Both of these were caressed by the duke, and both conspired, with blind passion, to second his ambitious views. It was proposed and carried in a full Parliament, or assembly of the people, to bestow upon him the seigniory for life (A.D. 1342). The real friends of their country, as well as the oligarchy, shuddered at this measure. Throughout all the vicissitudes of party, Florence had never yet lost sight of republican institutions. But happily the reign of tyranny was very short. The Duke of Athens had neither judgment nor activity for so difficult a station. He launched out at once into excesses which it would be desirable that arbitrary power should always commit at the outset. The taxes were considerably increased; their produce was dissipated. The honor of the state was sacrificed by an inglorious treaty with Pisa; her territory was diminished by some towns throwing off their dependence. Severe and multiplied punishments spread terror through the city. Ten months passed in this manner, when three separate conspiracies, embracing most of the nobility and of the great commoners, were planned for the recovery of freedom. The city was barricaded in every direction; and after a contest of some duration the Duke of Athens consented to abdicate his seigniory.

§ 12. Thus Florence recovered her liberty. Her constitutional laws now seemed to revive of themselves. But the nobility, who had taken a very active part in the recent liberation of their country, thought it hard to be still placed under the rigorous ordinances of justice. The populace of Florence, with its characteristic forgetfulness of benefits, was tenacious of those proscriptive ordinances. A new civil war in the city streets decided their quarrel; after a desperate

resistance, many of the principal houses were pillaged and burned; and the perpetual exclusion of the nobility was confirmed by fresh laws. But the people, now sure of their triumph, relaxed a little upon this occasion the ordinances of justice; and, to make some distinction in favor of merit or innocence, effaced certain families from the list of nobility. Five hundred and thirty persons were thus elevated, as we may call it, to the rank of commoners. Conversely, several unpopular commoners were ennobled, in order to disfranchise them. Nothing was more usual in subsequent times than such an arbitrary change of rank, as a penalty or a benefit. Those nobles who were rendered plebeian by favor, were obliged to change their name and arms. The constitution now underwent some change. From six the priors were increased to eight; and instead of being chosen from each of the greater arts, they were taken from the four quarters of the city. The gonfaloniers of companies were reduced to sixteen. And these, along with the seigniory and the twelve buonuomini, formed the college, where every proposition was discussed before it could be offered to the councils for their legislative sanction. But it could only originate, strictly speaking, in the seigniory, that is, the gonfalonier of justice, and eight priors, the rest of the college having merely the function of advice and assistance.

Several years elapsed before any material disturbance arose at Florence; but in 1357 a spring was set in motion which gave quite a different character to the domestic history of Florence. At the time when the Guelfs, with the assistance of Charles of Anjou, acquired an exclusive domination in the republic, the estates of the Ghibelins were confiscated. One-third of these confiscations was allotted to the state; another went to repair the losses of Guelf citizens; but the remainder became the property of a new corporate society, denominated the Guelf party (parte Guelfa), with a regular internal organization. The Guelf party had two councils, one of fourteen and one of sixty members; three, or afterwards four, captains, elected by scrutiny every two months, a treasury, and common seal—a little republic within the republic of Florence. Their primary duty was to watch over the Guelf interest; and for this purpose they had a particular officer for the accusation of suspected Ghibelins. We hear not much, however, of the Guelf society for near a century after their establishment; but they now began to execute a preponderating influence in the state. In this society the ancient nobles retained a considerable influ-

ence. The laws of exclusion had never been applied to that corporation. Two of the captains were always noble, two were commoners. The people, in debarring the nobility from ordinary privileges, were little aware of the more dangerous channel which had been left open to their ambition. With the nobility some of the great commoners acted in concert, and especially the family and faction of the Albizi. They carried a law by which every person accepting an office who should be convicted of Ghibelinism or of Ghibelin descent, upon testimony of public fame, became liable to punishment, capital or pecuniary, at the discretion of the priors. To this law they gave a retrospective effect. Many citizens who had been magistrates within a few years were cast in heavy fines on this indefinite charge. But the more usual practice was to warn (ammonire) men beforehand against undertaking public trust. If they neglected this hint, they were sure to be treated as convicted Ghibelins. Thus a very numerous class, called *Ammoniti*, was formed of proscribed and discontented persons, eager to throw off the intolerable yoke of the Guelf society; for the imputation of Ghibelin connections was generally an unfounded pretext for crushing the enemies of the governing faction. Men of approved Guelf principles and origin were every day warned from their natural privileges of sharing in magistracy. This spread an universal alarm through the city; but the great advantage of union and secret confederacy rendered the Guelf society, who had also the law on their side, irresistible by their opponents. Meanwhile the public honor was well supported abroad; Florence had never before been so distinguished as during the prevalence of this oligarchy.

§ 13. The Guelf society had governed with more or less absoluteness for near twenty years, when the republic became involved, through the perfidious conduct of the papal legate, in a war with the Holy See. Though the Florentines were by no means superstitious, this hostility to the Church appeared almost an absurdity to determined Guelfs, and shocked those prejudices about names which make up the politics of vulgar minds. The Guelf society, though it could not openly resist the popular indignation against Gregory XI., was not heartily inclined to this war. Its management fell, therefore, into the hands of eight commissioners, some of them not well affected to the society; whose administration was so successful and popular as to excite the utmost jealousy in the Guelfs. They began to renew their warnings, and in eight months excluded fourscore citizens.

The civil dissensions which followed need not be described at length. The seven greater arts were generally attached to the Guelf Society, while the fourteen lesser arts, composed of retail and mechanical traders, were eager to make Florence a democracy in fact as well as in name, by participating in the executive government. While the lesser arts were murmuring at the exclusive privileges of the commercial aristocracy, there was yet an inferior class of citizens who thought their own claims to equal privileges irrefragable. The arrangement of twenty-one trading companies had still left several kinds of artisans unincorporated, and consequently unprivileged. These had been attached to the art with which their craft had most connection in a sort of dependent relation. Thus to the company of drapers, the most wealthy of all, the various occupations instrumental in the manufacture, as wool-combers, dyers, and weavers, were appendant. Besides the sense of political exclusion, these artisans alleged that they were oppressed by their employers of the art. A still lower order of the community was the mere populace, who did not practice any regular trade, or who only worked for daily hire. These were called Ciompi, a corruption, it is said, of the French compère.

The inferior tradesmen demanded the establishment of two new arts for themselves, and one for the lower people. After various seditions, a violent insurrection, in which the ciompi, or lowest populace, were alone concerned, broke out. The gates of the palace belonging to the seigniory were forced open, the priors compelled to fly, and no appearance of a constitutional magistracy remained to throw the vail of law over the excesses of anarchy. The republic seemed to rock from its foundations; and the circumstance to which historians ascribe its salvation is not the least singular in this critical epoch. One Michel di Lando, a wool-comber, half-dressed and without shoes, happened to hold the standard of justice wrested from the proper officer when the populace burst into the palace. Whether he was previously conspicuous in the tumult is not recorded; but the wild, capricious mob, who had destroyed what they had no conception how to rebuild, suddenly cried out that Lando should be gonfalonier or seignior, and reform the city at his pleasure.

A choice, arising probably from wanton folly, could not have been better made by wisdom. Lando was a man of courage, moderation, and integrity. He gave immediate proofs of these qualities by causing his office to be respected. The eight commissioners of the war, who, though not

instigators of the sedition, were well pleased to see the Guelf party so entirely prostrated, now fancied themselves masters, and began to nominate priors. But Lando sent a message to them that he was elected by the people, and that he could dispense with their assistance. He then proceeded to the choice of priors. Three were taken from the greater arts; three from the lesser; and three from the two new arts and the lower people. This eccentric college lost no time in restoring tranquillity, and compelled the populace, by threat of punishment, to return to their occupations. But the ciompi were not disposed to give up the pleasures of anarchy so readily. They were dissatisfied at the small share allotted to them in the new distribution of offices, and murmured at their gonfalonier as a traitor to the popular cause. Lando was aware that an insurrection was projected; he took measures with the most respectable citizens; the insurgents, when they showed themselves, were quelled by force, and the gonfalonier retired from office with an approbation which all historians of Florence have agreed to perpetuate. The ciompi, once checked, were soon defeated. The next gonfalonier was, like Lando, a wool-comber; but, wanting the intrinsic merit of Lando, his mean station excited universal contempt. None of the arts could endure their low coadjutors; a short struggle was made by the populace, but they were entirely overpowered with considerable slaughter, and the government was divided between the seven greater and sixteen lesser arts in nearly equal proportions.

The party of the lesser arts, or inferior tradesmen, which had begun this confusion, were left winners when it ceased. But at the end of three years the aristocratical party regained its ascendency. They did not revive the severity practised towards the Ammoniti; but the two new arts, created for the small trades, were abolished, and the lesser arts reduced to a third part, instead of something more than one-half, of public offices. For half a century after this time no revolution took place at Florence. The Guelf aristocracy, strong in opulence and antiquity, and rendered prudent by experience, under the guidance of the Albizi family, maintained a preponderating influence without much departing, the times considered, from moderation and respect for the laws.

§ 14. Though fertile and populous, the proper district of Florence was by no means extensive. The republic made no acquisition of territory till 1351, when she annexed the

small city of Prato, not ten miles from her walls. Pistoja, though still nominally independent, received a Florentine garrison about the same time. Several additions were made to the district by fair purchase from the nobility of the Apennines, and a few by main force. The territory was still very little proportioned to the frame and power of Florence. The latter was founded upon her vast commercial opulence. Every Italian state employed mercenary troops, and the richest was, of course, the most powerful. In 1336 the revenues of Florence are reckoned by Villani at 300,000 florins, which, as he observes, is more than the king of Naples or Aragon possesses.[3] The expenditure went at that time very much beyond the receipt, and was defrayed by loans from the principal mercantile firms, which were secured by public funds—the earliest instance, I believe, of that financial resource. Her population was computed at ninety thousand souls. Villani reckons the district at eighty thousand men, I suppose those only of military age; but this calculation must have been too large, even though he included, as we may presume, the city in his estimate. Tuscany, though well cultivated and flourishing, does not contain by any means so great a number of inhabitants in that space at present.

§ 15. The first eminent conquest made by Florence was that of Pisa, early in the fifteenth century. Pisa had been distinguished as a commercial city ever since the age of the Othos. From her ports, and those of Genoa, the earliest naval armaments of the Western nations were fitted out against the Saracen corsairs who infested the Mediterranean coasts. In the eleventh century she undertook, and, after a pretty long struggle, completed, the important, or at least the splendid, conquest of Sardinia, an island long subject to a Moorish chieftain. Her naval prowess was supported by her commerce. A writer of the twelfth century reproaches her with the Jews, the Arabians, and other "monsters of the sea," who thronged in her streets. The crusades poured fresh wealth into the lap of the maritime Italian cities. In some of those expeditions a great portion of the armament was conveyed by sea to Palestine, and freighted the vessels of Pisa, Genoa, and Venice. When the Christians had bought with their blood the sea-coast of Syria, these republics procured the most extensive privileges in the new states that were formed out of their slender conquests, and became the

[3] The gold florin was worth about ten shillings of our money. The district of Florence was not then much larger than Middlesex.

conduits through which the produce of the East flowed in upon the ruder nations of Europe. Pisa maintained a large share of this commerce, as well as of maritime greatness, till near the end of the thirteenth century. In 1282 she was in great power, possessing Sardinia, Corsica, and Elba, from whence the republic, as well as private persons, derived large revenues, and almost ruled the sea with their ships and merchandise, and beyond sea were very powerful in the city of Aere, and much connected with its principal citizens. The prosperous era of Pisa is marked by her public edifices. She was the first Italian city that took a pride in architectural magnificence. Her cathedral is of the eleventh century; the baptistery, the famous inclined tower, or belfry, the arcades that surround the Campo Santo, or cemetery of Pisa, are of the twelfth, or, at latest, of the thirteenth.

It would have been no slight anomaly in the annals of Italy, or, we might say, of mankind, if two neighboring cities, competitors in every naval enterprise, had not been perpetual enemies to each other. One is more surprised, if the fact be true, that no war broke out between Pisa and Genoa till 1119. From this time, at least, they continually recurred. An equality of forces and of courage kept the conflict uncertain for the greater part of two centuries. Their battles were numerous, and sometimes, taken separately, decisive; but the public spirit and resources of each city were called out by defeat, and we generally find a new armament replace the losses of an unsuccessful combat. In this respect the naval contest between Pisa and Genoa, though much longer protracted, resembles that of Rome and Carthage in the first Punic war. But Pisa was reserved for her Ægades. In one fatal battle, off the little isle of Meloria, in 1284, her whole navy was destroyed. Several unfortunate and expensive armaments had almost exhausted the state, and this was the last effort, by private sacrifices, to equip one more fleet. After this defeat it was in vain to contend for empire. Eleven thousand Pisans languished for many years in prison; it was a current saying that whoever would see Pisa should seek her at Genoa. A treacherous chief, that Count Ugolino whose guilt was so terribly avenged, is said to have purposely lost the battle, and prevented the ransom of the captives, to secure his power; accusations that obtain easy credit with an unsuccessful people.

From the epoch of the battle of Meloria, Pisa ceased to be a maritime power. Forty years afterwards she was strip-

ped of her ancient colony, the island of Sardinia, which was annexed to the crown of Aragon. Her commerce now dwindled with her greatness. During the fourteenth century Pisa almost renounced the ocean, and directed her main attention to the politics of Tuscany. Ghibelin by invariable predilection, she was in constant opposition to the Guelf cities which looked up to Florence. But in the fourteenth century the names of freeman and Ghibelin were not easily united; and a city in that interest stood insulated between the republics of an opposite faction and the tyrants of her own. Pisa fell several times under the yoke of usurpers; she was included in the wide-spreading acquisitions of Gian Galeazzo Visconti. At his death one of his family seized the dominion, and finally the Florentines purchased for 400,000 florins a rival and once equal city. The Pisans made a resistance more according to what they had been than what they were.

§ 16. The early history of Genoa, in all her foreign relations, is involved in that of Pisa. As allies against the Saracens of Africa, Spain, and the Mediterranean islands, as corivals in commerce with these very Saracens or with the Christians of the East, as co-operators in the great expeditions under the banner of the cross, or as engaged in deadly warfare with each other, the two republics stand in continual parallel. From the beginning of the thirteenth century Genoa was, I think, the more prominent and flourishing of the two. She had conquered the island of Corsica at the same time that Pisa reduced Sardinia; and her acquisition, though less considerable, was longer preserved. Her territory at home, the ancient Liguria, was much more extensive, and, what was most important, contained a greater range of sea-coast than that of Pisa. But the commercial and maritime prosperity of Genoa may be dated from the recovery of Constantinople by the Greeks in 1261. Jealous of the Venetians, by whose arms the Latin emperors had been placed, and were still maintained, on their throne, the Genoese assisted Palæologus in overturning that usurpation. They obtained in consequence the suburb of Pera or Galata, over against Constantinople, as an exclusive settlement, where their colony was ruled by a magistrate sent from home, and frequently defied the Greek capital with its armed galleys and intrepid seamen. From this convenient station Genoa extended her commerce into the Black Sea, and established her principal factory at Caffa, in the Crimean peninsula. This commercial monopoly, for such she endeavored to ren-

der it, aggravated the animosity of Venice. As Pisa retired from the field of waters, a new enemy appeared upon the horizon to dispute the maritime dominion of Genoa. Her first war with Venice was in 1258. The second was not till after the victory of Meloria had crushed her more ancient enemy. It broke out in 1293, and was prosecuted with determined fury and a great display of naval strength on both sides. One Genoese armament consisted of 155 galleys, each manned with from 220 to 300 sailors. It was, however, beyond any other exertion. The usual fleets of Genoa and Venice were of seventy to ninety galleys.

But the most remarkable war, and that productive of the greatest consequences, was one that commenced in 1378, after several acts of hostility in the Levant. Genoa did not stand alone in this war. A formidable confederacy was raised against Venice, who had given provocation to many enemies. Of this Francis Carrara, seignior of Padua, and the King of Hungary were the leaders. But the principal struggle was, as usual, upon the waves. During the winter of 1378 a Genoese fleet kept the sea, and ravaged the shores of Dalmatia. The Venetian armament had been weakened by an epidemic disease, and when Vittor Pisani, their admiral, gave battle to the enemy, he was compelled to fight with a hasty conscription of landsmen against the best sailors in the world. Entirely defeated, and taking refuge at Venice with only seven galleys, Pisani was cast into prison, as if his ill-fortune had been his crime. Meanwhile the Genoese fleet, augmented by a strong reinforcement, rode before the long natural ramparts that separate the lagunes of Venice from the Adriatic. Six passages intersect the islands which constitute this barrier, besides the broader outlets of Brondolo and Fossone, through which the waters of the Brenta and the Adige are discharged. The lagune itself, as is well known, consists of extremely shallow water, unnavigable for any vessel except along the course of artificial and intricate passages. Notwithstanding the apparent difficulties of such an enterprise, Pietro Doria, the Genoese admiral, determined to reduce the city. His first successes gave him reason to hope. He forced the passage, and stormed the little town of Chioggia, built upon the inside of the isle bearing that name, about twenty-five miles south of Venice. Nearly four thousand prisoners fell here into his hands—an augury, as it seemed, of a more splendid triumph. In the consternation this misfortune inspired at Venice, the first impulse was to ask for peace. The ambassadors carried with them seven

Genoese prisoners, as a sort of peace-offering to the admiral, and were empowered to make large and humiliating concessions, reserving nothing but the liberty of Venice. Francis Carrara strongly urged his allies to treat for peace. But the Genoese were stimulated by long hatred, and intoxicated by this unexpected opportunity of revenge. Doria, calling the ambassadors into council, thus addressed them: "Ye shall obtain no peace from us, I swear to you, nor from the lord of Padua, till first we have put a curb in the mouths of those wild horses that stand upon the place of St. Mark. When they are bridled you shall have enough of peace. Take back with you your Genoese captives, for I am coming within a few days to release both them and their companions from your prisons." When this answer was reported to the Senate, they prepared to defend themselves with the characteristic firmness of their Government. Every eye was turned towards a great man unjustly punished, their admiral Vittor Pisani. He was called out of prison to defend his country amidst general acclamations. Under his vigorous command the canals were fortified or occupied by large vessels armed with artillery; thirty-four galleys were equipped; every citizen contributed according to his power; in the entire want of commercial resources (for Venice had not a merchant-ship during this war) private plate was melted; and the Senate held out the promise of ennobling thirty families who should be most forward in this strife of patriotism.

The new fleet was so ill provided with seamen that for some months the admiral employed them only in manœuvring along the canals. From some unaccountable supineness, or more probably from the insuperable difficulties of the undertaking, the Genoese made no assault upon the city. They had, indeed, fair grounds to hope its reduction by famine or despair. Every access to the continent was cut off by the troops of Padua; and the King of Hungary had mastered almost all the Venetian towns in Istria and along the Dalmatian coast. The Doge Contarini, taking the chief command, appeared at length with his fleet near Chioggia, before the Genoese were aware. They were still less aware of his secret design. He pushed one of the large round vessels, then called *cocche*, into the narrow passage of Chioggia which connects the lagune with the sea, and, mooring her athwart the channel, interrupted that communication. Attacked with fury by the enemy, this vessel went down on the spot, and the doge improved his advantage by sinking loads of stones until the passage became absolutely unnavigable It

was still possible for the Genoese fleet to follow the principal canal of the lagune towards Venice and the northern passages, or to sail out of it by the harbor of Brondolo; but, whether from confusion or from miscalculating the dangers of their position, they suffered the Venetians to close the canal upon them by the same means they had used at Chioggia, and even to place their fleet in the entrance of Brondolo so near to the lagune that the Genoese could not form their ships in line of battle. The circumstances of the two combatants were thus entirely changed. But the Genoese fleet, though besieged in Chioggia, was impregnable, and their command of the land secured them from famine. Venice, notwithstanding her unexpected success, was still very far from secure: it was difficult for the doge to keep his position through the winter; and if the enemy could appear in open sea, the risks of combat were extremely hazardous. It is said that the Senate deliberated upon transporting the seat of their liberty to Candia, and that the doge had announced his intention to raise the siege of Chioggia, if expected succors did not arrive by the 1st of January, 1380. On that very day Carlo Zeno, an admiral who, ignorant of the dangers of his country, had been supporting the honor of her flag in the Levant and on the coast of Liguria, appeared with a reinforcement of eighteen galleys and a store of provisions. From that moment the confidence of Venice revived. The fleet, now superior in strength to the enemy, began to attack them with vivacity. After several months of obstinate resistance, the Genoese—whom their republic had ineffectually attempted to relieve by a fresh armament—blocked up in the town of Chioggia, and pressed by hunger, were obliged to surrender. Nineteen galleys only, out of forty-eight, were in good condition; and the crews were equally diminished in the ten months of their occupation of Chioggia. The pride of Genoa was deemed to be justly humbled; and even her own historian confesses that God would not suffer so noble a city as Venice to become the spoil of a conqueror.

Though the capture of Chioggia did not terminate the war, both parties were exhausted, and willing, next year, to accept the mediation of the Duke of Savoy. By the peace of Turin, Venice surrendered most of her territorial possessions to the King of Hungary. That prince and Francis Carrara were the only gainers. Genoa obtained the isle of Tenedos, one of the original subjects of dispute—a poor indemnity for her losses. Though, upon a hasty view, the result of this war appears more unfavorable to Venice, yet

in fact it is the epoch of the decline of Genoa. From this time she never commanded the ocean with such navies as before; her commerce gradually went into decay; and the fifteenth century—the most splendid in the annals of Venice—is, till recent times, the most ignominious in those of Genoa. But this was partly owing to internal dissensions, by which her liberty, as well as glory, was for a while suspended.

§ 17. At Genoa, as in other cities of Lombardy, the principal magistrates of the republic were originally styled consuls. Their number varied from four to six, annually elected by the people in their full Parliament. These consuls presided over the republic, and commanded the forces by land and sea; while another class of magistrates, bearing the same title, were annually elected by the several companies into which the people were divided, for the administration of civil justice. This was the regimen of the twelfth century; but in the next Genoa fell into the fashion of intrusting the executive power to a foreign podestà. The podestà was assisted by a council of eight, chosen by the eight companies of nobility. This institution gave not only an aristocratic, but almost an oligarchical character to the constitution, since many of the nobility were not members of these eight societies. Of the Senate or Councils we hardly know more than their existence; they are very little mentioned by historians. Every thing of a general nature, every thing that required the expression of public will, was reserved for the entire and unrepresented sovereignty of the people. In no city was the Parliament so often convened—for war, for peace, for alliance, for change of government. These very dissonant elements were not likely to harmonize. The people, sufficiently accustomed to the forms of democracy to imbibe its spirit, repined at the practical influence which was thrown into the scale of the nobles. Among the nobility themselves, four houses were distinguished beyond all the rest—the Grimaldi, the Fieschi, the Doria, the Spinola; the two former of Guelf politics, the latter adherents of the Empire. Perhaps their equality of forces, and a jealousy which even the families of the same faction entertained of each other, prevented any one from usurping the seigniory at Genoa. Neither the Guelf nor Ghibelin party obtaining a decided preponderance, continual revolutions occurred in the city. The most celebrated was in 1339, which led to the election of the first doge. A large fleet in want of pay broke out in open insurrection. Savona and the neighbor-

ing towns took arms avowedly against the aristocratical tyranny; and the capital was itself on the point of joining the insurgents. There was, by the Genoese constitution, a magistrate named the abbot of the people, acting as a kind of tribune for their protection against the oppression of the nobility. This office had been abolished by the present government, and it was the first demand of the malcontents that it should be restored. This was acceded to, and twenty delegates were appointed to make the choice. While they delayed, and the populace was grown weary with waiting, a nameless artisan called out from an elevated station that he could direct them to a fit person. When the people, in jest, bade him speak on, he uttered the name of Simon Boccanegra. This was a man of noble birth, and well esteemed, who was then present among the crowd. The word was suddenly taken up; a cry was heard that Boccanegra should be abbot: he was instantly brought forward, and the sword of justice forced into his hand. As soon as silence could be obtained he modestly thanked them for their favor, but declined an office which his nobility disqualified him from exercising. At this a single voice out of the crowd exclaimed, "*Seignior!*" and this title was reverberated from every side. Fearful of worse consequences, the actual magistrates urged him to comply with the people and accept the office of abbot. But Boccanegra, addressing the assembly, declared his readiness to become their abbot, seignior, or whatever they would. The cry of "Seignior!" was now louder than before; while others cried out, "Let him be duke!" The latter title was received with greater approbation; and Boccanegra was conducted to the palace, the first duke, or doge, of Genoa.

Caprice alone, or an idea of more pomp and dignity, led the populace, we may conjecture, to prefer this title to that of seignior; but it produced important and highly beneficial consequences. In all neighboring cities an arbitrary government had been already established under their respective seigniors; the name was associated with indefinite power, while that of doge had only been taken by the elective and very limited chief magistrate of another maritime republic. Neither Boccanegra nor his successors ever rendered their authority unlimited or hereditary. The constitution of Genoa, from an oppressive aristocracy, became a mixture of the two other forms, with an exclusion of the nobles from power. Those four great families who had domineered alternately for almost a century lost their influence at home after the revolution of 1339. Yet, what is remarkable

enough, they were still selected in preference for the highest of trusts: their names are still identified with the glory of Genoa; her fleets hardly sailed but under a Doria, a Spinola, or a Grimalda—such confidence could the republic bestow upon their patriotism, or that of those whom they commanded. Meanwhile two or three new families, a plebeian oligarchy, filled their place in domestic honors; the Adorni, the Fregosi, the Montalti, contended for the ascendant. From their competition ensued revolutions too numerous almost for a separate history; in four years, from 1390 to 1394, the doge was ten times changed—swept away or brought back in the fluctuations of popular tumult. Antoniotto Adorno, four times doge of Genoa, had sought the friendship of Gian Galeazzo Visconti; but that crafty tyrant meditated the subjugation of the republic, and played her factions against one another to render her fall secure. Adorno perceived that there was no hope for ultimate independence but by making a temporary sacrifice of it. His own power, ambitious as he had been, he voluntarily resigned; and placed the republic under the protection or seigniory of the King of France. Terms were stipulated very favorable to her liberties; but, with a French garrison once received into the city, they were not always sure of observance.

§ 18. While Genoa lost even her political independence, Venice became more conspicuous and powerful than before. That famous republic deduces its original, and even its liberty, from an era beyond the commencement of the Middle Ages. The Venetians boast of a perpetual emancipation from the yoke of barbarians. From that ignominious servitude some natives of Aquileia and neighboring towns fled to the small cluster of islands that rise amidst the shoals at the mouth of the Brenta. Here they built the town of Rivoalto, the modern Venice, in 421; but their chief settlement was, till the beginning of the ninth century, at Malamocco. Both the Western and the Eastern empire alternately pretended to exercise dominion over her; she was conquered by Pepin, son of Charlemagne, and restored by him, as the chroniclers say, to the Greek emperor, Nicephorus. There is every appearance that the Venetians had always considered themselves as subject to the Eastern Empire. And this connection was not broken in the early part, at least, of the tenth century. But, for every essential purpose, Venice might long before be deemed an independent state. Her doge was not confirmed at Constantinople; she paid no tribute, and lent no assistance in war. Her own navies, in

the ninth century, encountered the Normans, the Saracens, and the Sclavonians in the Adriatic Sea. Upon the coast of Dalmatia were several Greek cities, which the Empire had ceased to protect, and which, like Venice itself, became republics for want of a master. Ragusa was one of these, and, more fortunate than the rest, survived as an independent city till our own age. In return for the assistance of Venice, these little sea-ports put themselves under her government; The Sclavonian pirates were repressed; and after acquiring, partly by consent, partly by arms, a large tract of maritime territory, the doge took the title of Duke of Dalmatia. Three or four centuries, however, elapsed before the republic became secure of these conquests, which were frequently wrested from her by rebellions of the inhabitants, or by her powerful neighbor, the King of Hungary.

A more important source of Venetian greatness was commerce. In the darkest and most barbarous period, before Genoa or even Pisa had entered into mercantile pursuits, Venice carried on an extensive traffic both with the Greek and Saracen regions of the Levant. The Crusades enriched and aggrandized Venice more, perhaps, than any other city. Her splendor may, however, be dated from the taking of Constantinople by the Latins in 1204. In this famous enterprise, which diverted a great armament destined for the recovery of Jerusalem, the French and Venetian nations were alone engaged; but the former only as private adventurers, the latter with the whole strength of their republic under its doge, Henry Dandolo. Three-eighths of the city of Constantinople, and an equal proportion of the provinces, were allotted to them in the partition of the spoil, and the doge took the singular but accurate title, Duke of three-eighths of the Roman Empire. Their share was increased by purchases from less opulent crusaders, especially one of much importance, the island of Candia, which they retained till the middle of the seventeenth century. These foreign acquisitions were generally granted out in fief to private Venetian nobles under the supremacy of the republic. It was thus that the Ionian islands, to adopt the vocabulary of our day, came under the dominion of Venice, and guaranteed that sovereignty which she now began to affect over the Adriatic. Those of the Archipelago were lost in the sixteenth century. This political greatness was sustained by an increasing commerce. No Christian state preserved so considerable an intercourse with the Mohammedans. While Genoa kept the keys of the Black Sea by her colonies of Pera and Caffa, Venice directed

her vessels to Acre and Alexandria. These connections, as is the natural effect of trade, deadened the sense of religious antipathy; and the Venetians were sometimes charged with obstructing all efforts towards a new crusade, or even any partial attacks upon the Mohammedan nations.

§ 19. The earliest form of government at Venice, as we collect from an epistle of Cassiodorus in the sixteenth century, was by twelve annual tribunes. Perhaps the union of the different islanders was merely federative. However, in 697, they resolved to elect a chief magistrate by name of duke, or, in their dialect, *Doge of Venice*. No councils appear to have limited his power, or represented the national will. The doge was general and judge; he was sometimes permitted to associate his son with him, and thus to prepare the road for hereditary power; his government had all the prerogatives, and, as far as in such a state of manners was possible, the pomp, of a monarchy. But he acted in important matters with the concurrence of a general assembly, though, from the want of positive restraints, his executive government might be considered as nearly absolute. Time, however, demonstrated to the Venetians the imperfections of such a constitution. Limitations were accordingly imposed on the doge, and at length, in 1172, the *Great Council* was established. It was at first elective, and annually renewed; but it became gradually, by successive changes, an exclusive hereditary aristocracy, and, in 1319, all elective forms were abolished. By the constitution of Venice as it was then settled, every descendant of a member of the Great Council, on attaining twenty-five years of age, entered as of right into that body, which, of course, became unlimited in its numbers.

But an assembly so numerous as the Great Council could never have conducted the public affairs with that secrecy and steadiness which were characteristic of Venice; and without an intermediary power between the doge and the patrician multitude the constitution would have gained nothing in stability to compensate for the loss of popular freedom. The executive government was committed to a *Senate*, consisting of sixty members, in which the doge presided, and to which the care of the state in all domestic and foreign relations, and the previous deliberation upon proposals submitted to the Great Council, was confided. It was enlarged in the fourteenth century by sixty additional members; and as a great part of the magistrates had also seats in it, the whole number amounted to between two and three

hundred. Though the legislative power, properly speaking, remained with the Great Council, the Senate used to impose taxes, and had the exclusive right of making peace and war. It was annually renewed, like almost all other councils at Venice, by the Great Council. But since even this body was too numerous for the preliminary discussion of business, six councillors, forming, along with the doge, the *Seigniory*, or visible representative of the republic, were empowered to dispatch orders, to correspond with ambassadors, to treat with foreign states, to convoke and preside in the councils, and perform other duties of an administration.

It might be imagined that a dignity so shorn of its lustre as that of doge would not excite an overweening ambition. But the Venetians were still jealous of extinguished power; and while their constitution was yet immature the Great Council planned new methods of restricting their chief magistrate. An oath was taken by the doge on his election, so comprehensive as to embrace every possible check upon undue influence. He was bound not to correspond with foreign states, or to open their letters, except in the presence of the seigniory; to acquire no property beyond the Venetian dominions, and to resign what he might already possess; to interpose, directly or indirectly, in no judicial process; and not to permit any citizen to use tokens of subjection in saluting him. As a further security, they devised a remarkably complicated mode of supplying the vacancy of his office. As many balls as there were members of the Great Council present were placed in an urn. Thirty of these were gilt. The holders of gilt balls were reduced by a second ballot to nine. The nine elected forty, whom lot reduced to twelve. The twelve chose twenty-five by separate nomination. The twenty-five were reduced by lot to nine; and each of the nine chose five. These forty-five were reduced to eleven, as before; the eleven elected forty-one, who were the ultimate voters for a doge. This intricacy appears useless, and consequently absurd; but the original principle of a Venetian election (for something of the same kind was applied to all their councils and magistrates) may not always be unworthy of imitation.

An hereditary prince could never have remained quiet in such trammels as were imposed upon the Doge of Venice. But early prejudice accustoms men to consider restraint, even upon themselves, as advantageous; and the limitations of ducal power appeared to every Venetian as fundamental as the great laws of the English constitution do to ourselves.

For life the chief magistrates of their country, her noble citizens forever, they might thank her in their own name for what she gave, and in that of their posterity for what she withheld. Once only a doge of Venice was tempted to betray the freedom of the republic. Marin Falieri, a man far advanced in life, engaged, for some petty resentment, in a wild intrigue to overturn the government. The conspiracy was soon discovered, and the doge avowed his guilt. An aristocracy so firm and so severe did not hesitate to order his execution in the ducal palace (A.D. 1355).

The commonalty, however, did not quietly acquiesce in their exclusion from the Great Council. Several commotions took place about the beginning of the fourteenth century, with the object of restoring a more popular regimen. Upon the suppression of the last, in 1310, the aristocracy sacrificed their own individual freedom along with that of the people, to the preservation of an imaginary privilege. They established the famous *Council of Ten*, that most remarkable part of the Venetian constitution. This council, it should be observed, consisted in fact of seventeen, comprising the seigniory, or the doge and his six councillors, as well as the ten properly so called. The Council of Ten had by usage, if not by right, a controlling and dictatorial power over the Senate and other magistrates, rescinding their decisions, and treating separately with foreign princes. Their vast influence strengthened the executive government, of which they formed a part, and gave a vigor to its movements which the jealousy of the councils would possibly have impeded. But they are chiefly known as an arbitrary and inquisitorial tribunal, the standing tyranny of Venice. Excluding the old council of forty, to which had been intrusted the exercise of criminal justice, not only from the investigation of treasonable charges, but of several other crimes of magnitude, they inquired, they judged, they punished, according to what they called reason of state. The public eye never penetrated the mystery of their proceedings; the accused was sometimes not heard, never confronted with witnesses; the condemnation was secret as the inquiry, the punishment undivulged like both. The terrible and odious machinery of a police, the insidious spy, the stipendiary informer, unknown to the carelessness of feudal governments, found their natural soil in the republic of Venice. Tumultuous assemblies were scarcely possible in so peculiar a city; and private conspiracies never failed to be detected by the vigilance of the Council of Ten. Compared with the Tuscan republics, the tran-

quillity of Venice is truly striking. The names of Guelf and Ghibelin hardly raised any emotion in her streets, though the Government was considered in the first part of the fourteenth century as rather inclined towards the latter party. But the wildest excesses of faction are less dishonoring than the stillness and moral degradation of servitude.

§ 20. Until almost the middle of the fourteenth century Venice had been content without any territorial possessions in Italy; unless we reckon a very narrow strip of sea-coast, bordering on her lagunes, called the Dogato. Neutral in the great contests between the Church and the Empire, between the free cities and their sovereigns, she was respected by both parties, while neither ventured to claim her as an ally. But the rapid progress of Mastino della Scala, lord of Verona, with some particular injuries, led the Senate to form a league with Florence against him. The result of this combination was to annex the district of Treviso to the Venetian dominions. But they made no further conquests in that age. On the contrary, they lost Treviso in the unfortunate war of Chioggia, and did not regain it till 1389. Nor did they seriously attempt to withstand the progress of Gian Galeazzo Visconti, who, after overthrowing the family of Scala, stretched almost to the Adriatic, and altogether subverted for a time the balance of power in Lombardy.

But upon the death of this prince, in 1404, a remarkable crisis took place in that country. He left two sons, Giovanni Maria and Filippo Maria, both young, and under the care of a mother who was little fitted for her situation. Through her misconduct and the selfish ambition of some military leaders, who had commanded Gian Galeazzo's mercenaries, that extensive dominion was soon broken into fragments. Bergamo, Como, Lodi, Cremona, and other cities revolted, submitting themselves in general to the families of their former princes, the earlier race of usurpers, who had for nearly a century been crushed by the Visconti. A Guelf faction revived after the name had long been proscribed in Lombardy. Francesco da Carrara, lord of Padua, availed himself of this revolution to get possession of Verona, and seemed likely to unite all the cities beyond the Adige. No family was so odious to the Venetians as that of Carrara. Though they had seemed indifferent to the more real danger in Gian Galeazzo's lifetime, they took up arms against this inferior enemy. Both Padua and Verona were reduced, and, the Duke of Milan ceding Vicenza, the republic of Venice came suddenly into the possession of an extensive territory. Fran-

cesco da Carrara, who had surrendered in his capital, was put to death in prison at Venice.

Notwithstanding the deranged condition of the Milanese, no further attempts were made by the Senate of Venice for twenty years. They had not yet acquired that decided love of war and conquest which soon began to influence them against all the rules of their ancient policy. Meantime the dukes of Milan had recovered a great part of their dominions as rapidly as they had lost them. Giovanni Maria, the elder brother, a monster of guilt even among the Visconti, having been assassinated, Filippo Maria assumed the government of Milan and Pavia, almost his only possessions. But though weak and unwarlike himself, he had the good-fortune to employ Carmagnola, one of the greatest generals of that military age. Most of the revolted cities were tired of their new masters, and, their inclinations conspiring with Carmagnola's eminent talents and activity, the house of Visconti reassumed its former ascendency from the Sessia to the Adige. Its fortunes might have been still more prosperous if Filippo Maria had not rashly as well as ungratefully offended Carmagnola. That great captain retired to Venice, and inflamed a disposition towards war which the Florentines and the Duke of Savoy had already excited. The Venetians had previously gained some important advantages in another quarter, by reducing the country of Friuli, with part of Istria, which had for many centuries depended on the temporal authority of a neighboring prelate, the patriarch of Aquileia. They entered into this new alliance. No undertaking of the republic had been more successful. Carmagnola led on their armies, and in about two years Venice acquired Brescia and Bergamo, and extended her boundary to the river Adda, which she was destined never to pass (A.D. 1426).

§ 21. Such conquests could only be made by a city so peculiarly maritime as Venice through the help of mercenary troops. But, in employing them, she merely conformed to a fashion which states to whom it was less indispensable had long since established. A great revolution had taken place in the system of military service through most parts of Europe, but especially in Italy. During the twelfth and thirteenth centuries, whether the Italian cities were engaged in their contest with the emperors or in less arduous and general hostilities among each other, they seem to have poured out almost their whole population as an armed and loosely organized militia. This militia was of course principally

composed of infantry. Gentlemen, however, were always mounted; and the superiority of a heavy cavalry must have been prodigiously great over an undisciplined and ill-armed populace. In the thirteenth and following centuries armies seem to have been considered as formidable nearly in proportion to the number of men-at-arms or lancers. A charge of cavalry was irresistible; battles were continually won by inferior numbers, and vast slaughter was made among the fugitives.

As the comparative inefficiency of foot-soldiers became evident, a greater proportion of cavalry was employed, and armies, though better equipped and disciplined, were less numerous. This we find in the early part of the fourteenth century. The main point for a state at war was to obtain a sufficient force of men-at-arms. As few Italian cities could muster a large body of cavalry from their own population, the obvious resource was to hire mercenary troops. Many soldiers of fortune from Germany, France, and Hungary engaged in the service of the Italian states. Their services were anxiously solicited and abundantly repaid. An unfortunate prejudice in favor of strangers prevailed among the Italians of that age. They ceded to them, one knows not why, certainly without having been vanquished, the palm of military skill and valor. The word Transalpine (Oltramontani) is frequently applied to hired cavalry by the two Villani as an epithet of excellence.

The experience of every fresh campaign now told more and more against the ordinary militia. It has been usual for modern writers to lament the degeneracy of martial spirit among the Italians of that age. But the contest was too unequal between an absolutely invulnerable body of cuirassiers and an infantry of peasants or citizens. The cavalry had about this time laid aside the hauberk, or coat of mail, their ancient distinction from the unprotected populace; which, though incapable of being cut through by the sabre, afforded no defense against the pointed sword introduced in the thirteenth century, nor repelled the impulse of a lance or the crushing blow of a battle-axe. Plate-armor was substituted in its place; and the man-at-arms, cased in entire steel, the several pieces firmly riveted, and proof against every stroke, his charger protected on the face, chest, and shoulders, or, as it was called, barded with plates of steel, fought with a security of success against enemies inferior perhaps only in these adventitious sources of courage to himself.

§ 22. It could hardly be expected that stipendiary troops, chiefly composed of Germans, would conduct themselves without insolence and contempt of the effeminacy which courted their services. Indifferent to the cause they supported, the highest pay and the richest plunder were their constant motives. As Italy was generally the theatre of war in some of her numerous states, a soldier of fortune, with his lance and charger for an inheritance, passed from one service to another without regret and without discredit. But if peace happened to be pretty universal, he might be thrown out of his only occupation, and reduced to a very inferior condition, in a country of which he was not a native. It naturally occurred to men of their feelings, that, if money and honor could only be had while they retained their arms, it was their own fault if they ever relinquished them. Upon this principle they first acted in 1343, when the republic of Pisa disbanded a large body of German cavalry which had been employed in the war with Florence. A partisan, whom the Italians call the Duke Guarnieri, engaged these dissatisfied mercenaries to remain united under his command. His plan was to levy contributions on all countries which he entered with his company, without aiming at any conquests. This was the first of the companies of adventure, which continued for many years to be the scourge and disgrace of Italy. Guarnieri, after some time, withdrew his troops, satiated with plunder, into Germany; but he served in the invasion of Naples by Louis, king of Hungary, in 1348, and, forming a new company, ravaged the ecclesiastical state. A still more formidable band of disciplined robbers appeared in 1353, under the command of Fra Moriale, and afterwards of Conrad Lando. This was denominated the Great Company, and consisted of several thousand regular troops, besides a multitude of half-armed ruffians, who assisted as spies, pioneers, and plunderers. The rich cities of Tuscany and Romagna paid large sums that the Great Company, which was perpetually in motion, might not march through their territory.

None of the foreign partisans who entered into the service of Italian states acquired such renown in that career as an Englishman whom contemporary writers call Aucud or Agutus, but to whom we may restore his national appellation of Sir John Hawkwood. This very eminent man had served in the war of Edward III., and obtained his knighthood from that sovereign, though originally, if we may trust common fame, bred to the trade of a tailor. After the peace

of Bretigni, France was ravaged by the disbanded troops, whose devastations Edward was accused, perhaps unjustly, of secretly instigating. A large body of these, under the name of the White Company, passed into the service of the Marquis of Montferrat. They were some time afterwards employed by the Pisans against Florence; and during this latter war Hawkwood appears as their commander. For thirty years he was continually engaged in the service of the Visconti, of the pope, or of the Florentines, to whom he devoted himself for the latter part of his life with more fidelity and steadiness than he had shown in his first campaigns. The republic testified her gratitude by a public funeral, and by a monument in the Duomo, which still perpetuates his memory.

The name of Sir John Hawkwood is worthy to be remembered as that of the first distinguished commander who had appeared in Europe since the destruction of the Roman Empire. It would be absurd to suppose that any of the constituent elements of military genius which nature furnishes to energetic characters were wanting to the leaders of a barbarian or feudal army: untroubled perspicacity in confusion, firm decision, rapid execution, providence against attack, fertility of resource and stratagem—these are in quality as much required from the chief of an Indian tribe as from the accomplished commander. But we do not find them in any instance so consummated by habitual skill as to challenge the name of generalship. Hawkwood appears to me the first real general of modern times—the earliest master, however imperfect, in the science of Turenne and Wellington. Every contemporary Italian historian speaks with admiration of his skillful tactics in battle, his stratagems, his well-conducted retreats. Praise of this description is hardly bestowed, certainly not so continually, on any former captain.

Hawkwood was not only the greatest but the last of the foreign condottieri, or captains of mercenary bands. While he was yet living, a new military school had been formed in Italy, which not only superseded, but eclipsed, all the strangers. This important reform was ascribed to Alberic di Barbiano, lord of some petty territories near Bologna. He formed a company altogether of Italians about the year 1379. It is not to be supposed that natives of Italy had before been absolutely excluded from service. But this was the first trading company, if I may borrow the analogy, the first regular body of Italian mercenaries, attached only to their commander without any consideration of party, like

the Germans and English of Lando and Hawkwood. Alberic di Barbiano, though himself no doubt a man of military talents, is principally distinguished by the school of great generals which the company of St. George under his command produced, and which may be deduced, by regular succession, to the sixteenth century.

Two of the most distinguished members of this school were Braccio di Montone, a noble Perugian, and Sforza Attendolo, originally a peasant in the village of Cotignuola. Nearly equal in reputation, unless perhaps Braccio may be reckoned the more consummate general, they were divided by a long rivalry, which descended to the next generation, and involved all the distinguished leaders of Italy. The distractions of Naples, and the anarchy of the ecclesiastical state, gave scope not only to their military but political ambition. Sforza was invested with extensive fiefs in the kingdom of Naples, and with the office of Great Constable. Braccio aimed at independent acquisitions, and formed a sort of principality around Perugia. This, however, was entirely dissipated at his death. When Sforza and Braccio were no more, their respective parties were headed by the son of the former, Francesco Sforza, and by Nicolas Piccinino, who for more than twenty years fought, with few exceptions, under opposite banners. Piccinino was constantly in the service of Milan. Sforza married Bianca, the natural daughter and only child of Filippo Maria, duke of Milan, and last of his family. But upon the death of Filippo Maria in 1447, the citizens of Milan revived their republican government. A republic in that part of Lombardy might, with the help of Venice and Florence, have withstood any domestic or foreign usurpation. But Venice was hostile, and Florence indifferent. Sforza became the general of this new state, aware that such would be the probable means of becoming its master. No politician of that age scrupled any breach of faith for his interest. Sforza, with his army, deserted to the Venetians; and the republic of Milan, being both incapable of defending itself and distracted by civil dissensions, soon fell a prey to his ambition. In 1450 he was proclaimed duke, rather by right of election, or of conquest, than in virtue of his marriage with Bianca, whose sex, as well as illegitimacy, seemed to preclude her from inheriting.

§ 23. Whatever evils might be derived, and they were not trifling, from the employment of foreign or native mercenaries, it was impossible to discontinue the system with-

out general consent; and too many states found their own advantage in it for such an agreement. The condottieri were, indeed, all notorious for contempt of engagements. Their rapacity was equal to their bad faith. Besides an enormous pay, for every private cuirassier received much more in value than a subaltern officer at present, they exacted gratifications for every success. But every thing was endured by ambitious governments who wanted their aid. Florence and Venice were the two states which owed most to the companies of adventure. The one loved war without its perils; the other could never have obtained an inch of territory with a population of sailors. But they were both almost inexhaustibly rich by commercial industry; and as the surest pay-masters, were best served by those they employed.

The Italian armies of the fifteenth century have been remarked for one striking peculiarity. War has never been conducted at so little personal hazard to the soldier. Combats frequently occur, in the annals of that age, wherein success, though warmly contested, cost very few lives even to the vanquished. This innocence of blood, which some historians turn into ridicule, was no doubt owing in a great degree to the rapacity of the companies of adventure, who, in expectation of enriching themselves by the ransom of prisoners, were anxious to save their lives. But it was rendered more practicable by the nature of their arms. For once, and for once only, in the history of mankind, the art of defense had outstripped that of destruction. In a charge of lancers many fell, unhorsed by the shock, and might be suffocated or bruised to death by the pressure of their own armor; but the lance's point could not penetrate the breastplate, the sword fell harmless on the helmet, the conqueror, in the first impulse of passion, could not assail any vital part of a prostrate but not exposed enemy. Still less was to be dreaded from the archers or cross-bowmen, who composed a large part of the infantry. The bow indeed, as drawn by an English foot-soldier, was the most formidable of arms before the invention of gunpowder. It was a peculiarly English weapon, and none of the other principal nations adopted it so generally or so successfully. The cross-bow, which brought the strong and weak to a level, was more in favor upon the Continent. But both the arrow and the quarrel glanced away from plate-armor, such as it became in the fifteenth century, impervious in every point, except when the vizor was raised from the face, or some part of the body ac-

cidentally exposed. The horse, indeed, was less completely protected.

Meanwhile a discovery accidentally made had prepared the way not only for a change in her military system, but for political effects still more extensive. There seems little reason to doubt that gunpowder was introduced through the means of the Saracens into Europe. Its use in engines of war, though they may seem to have been rather like our fire-works than artillery, is mentioned by an Arabic writer in the Escurial collection about the year 1249. It was known not long afterwards to our philosopher Roger Bacon, though he concealed, in some degree, the secret of its composition. In the first part of the fourteenth century, cannon, or rather mortars, were invented, and the applicability of gunpowder to purposes of war was understood. Edward III. employed some pieces of artillery with considerable effect at Crecy. But its use was still not very frequent; a circumstance which will surprise us less when we consider the unscientific construction of artillery; the slowness with which it could be loaded; its stone balls, of uncertain aim and imperfect force, being commonly fired at a considerable elevation; and especially the difficulty of removing it from place to place during an action. In sieges and in naval engagements, as for example, in the war of Chioggia, it was more frequently employed. Gradually, however, the new artifice of evil gained ground. The French made the principal improvements. They cast their cannon smaller, placed them on lighter carriages, and used balls of iron. They invented portable arms for a single soldier, which, though clumsy in comparison with their present state, gave an augury of a prodigious revolution in the military art. John, duke of Burgundy, in 1411, had 4000 hand-cannons, as they were called, in his army. They are found, under different names and modifications of form, in most of the wars that historians of the fifteenth century record, but less in Italy than beyond the Alps. The Milanese, in 1449, are said to have armed their militia with 20,000 muskets, which struck terror into the old generals. But these muskets, supported on a rest, and charged with great delay, did less execution than our sanguinary science would require; and, uncombined with the admirable invention of the bayonet, could not in any degree resist a charge of cavalry. The pike had a greater tendency to subvert the military system of the Middle Ages, and to demonstrate the efficiency of disciplined infantry. Two free nations had already discomfited, by the help of such in-

fantry, those arrogant knights on whom the fate of battles had depended—the Bohemians, instructed in the art of war by their great master, John Zisca; and the Swiss, who, after winning their independence inch by inch from the house of Austria, had lately established their renown by a splendid victory over Charles of Burgundy. Louis XI. took a body of mercenaries from the United Cantons into pay. Maximilian had recourse to the same assistance. And though the importance of infantry was not, perhaps, decidedly established till the Milanese wars of Louis XII. and Francis I., in the sixteenth century, yet the last years of the Middle Ages, according to our division, indicated the commencement of that military revolution in the general employment of pikemen and musketeers.

§ 24. I have not alluded for some time to the domestic history of a kingdom which bore a considerable part, during the fourteenth and fifteenth centuries, in the general combi-

KINGS OF NAPLES OF THE HOUSE OF ANJOU.

CHARLES I. of Anjou, son of Louis VIII., king of France, and brother of Louis IX., king of France, becomes king of Naples and Sicily, A.D. 1265. Loses Sicily 1283, d. 1285.

CHARLES II., m. daughter of King of Hungary, 1285–1305.

Charles Martel, king of Hungary, d. 1296.
- Carobert, king of Hungary, d. 1342.
  - Louis, king of Hungary
  - Andrew, m. Joanna I., strangled 1345.

ROBERT, 1305–1343.
- Charles, duke of Calabria, d. 1328.
  - JOANNA I., m. Andrew of Hungary and other husbands, 1343–1378.

John, duke of Durazzo.
- Charles, duke of Durazzo.
  - Margaret, m. Charles III. king of Naples.
- Louis.
  - CHARLES III., king 1382–1386, m. Margaret of Durazzo.
    - LADISLAUS, king of Naples, 1386–1414.
    - JOANNA II., 1414–1435.

nations of Italian policy, not wishing to interrupt the reader's attention by too frequent transitions. We must return again to a more remote age in order to take up the history of Naples. Charles of Anjou, after the deaths of Manfred and Conradin had left him without a competitor, might be ranked in the first class of European sovereigns. (See p. 180.) Master of Provence and Naples, and at the head of the Guelf faction in Italy, he had already prepared a formidable attack on the Greek empire, when a memorable revo-

lution in Sicily brought humiliation on his latter years. John of Procida, a Neapolitan, whose patrimony had been confiscated for his adherence to the party of Manfred, retained, during long years of exile, an implacable resentment against the house of Anjou. From the dominions of Peter III., king of Aragon, who had bestowed estates upon him in Valencia, he kept his eye continually fixed on Naples and Sicily. The former held out no favorable prospects; the Ghibelin party had been entirely subdued, and the principal barons were of French extraction or inclinations. But the island was in a very different state. Unused to any strong government, it was now treated as a conquered country. A large body of French soldiers garrisoned the fortified towns, and the systematic oppression was aggravated by those insults upon the honor of families which are most intolerable to an Italian temperament. John of Procida, travelling in disguise through the island, animated the barons

KINGS OF SICILY OF THE HOUSE OF ARAGON.

1. PETER III. (king of Aragon), m. Constance, daughter of Conradin of Suabia [see p. 180], and becomes king of Sicily after the Sicilian Vespers, A.D. 1283, d. 1285.

- Alfonso III., king of Aragon.
- JAMES II., king of Aragon and king of Sicily, abdicates in favor of Charles II., king of Naples, 1295.
- Frederick I., elected king of Sicily, 1296–1336.
  - PETER II., king of Sicily, 1336–1342.
    - Louis, king of Sicily, 1342–1355.
    - FREDERICK II., king of Sicily, 1355–1377.
      - MARIA, queen of Sicily, 1377–1402, m. Martin, prince of Aragon.

with a hope of deliverance. In like disguise he repaired to the pope, Nicholas III., who was jealous of the new Neapolitan dynasty, and obtained his sanction to the projected insurrection; to the Court of Constantinople, from which he readily obtained money; and to the King of Aragon, who employed that money in fitting out an armament, that hovered upon the coast of Africa, under pretext of attacking the Moors. It is, however, difficult at this time to distinguish the effects of preconcerted conspiracy from those of casual resentment. Before the intrigues so skillfully conducted

had taken effect, yet after they were ripe for development, an outrage committed upon a lady at Palermo, during a procession on the vigil of Easter, provoked the people to that terrible massacre of all the French in their island which has obtained the name of *Sicilian Vespers*. Unpremeditated as such an ebullition of popular fury must appear, it fell in, by the happiest coincidence, with the previous conspiracy. The King of Aragon's fleet was at hand; the Sicilians soon called in his assistance; he sailed to Palermo, and accepted the crown (A.D. 1283).

§ 25. The long war that ensued upon this revolution involved or interested the greater part of civilized Europe. Philip III. of France adhered to his uncle, and the King of Aragon was compelled to fight for Sicily within his native dominions. This, indeed, was the more vulnerable point of attack. Upon the sea he was lord of the ascendant. His Catalans, the most intrepid of Mediterranean sailors, were led to victory by a Calabrian refugee, Roger di Loria, the most illustrious and successful admiral whom Europe produced till the age of Blake and De Ruyter. In one of Loria's battles the eldest son of the King of Naples was made prisoner, and the first years of his own reign were spent in confinement. But notwithstanding these advantages, it was found impracticable for Aragon to contend against the arms of France, and latterly of Castile, sustained by the rolling thunders of the Vatican. Peter III. had bequeathed Sicily to his second son, James; Alfonso, the eldest, king of Aragon, could not fairly be expected to ruin his inheritance for his brother's cause; nor were the barons of that free country disposed to carry on a war without national objects. He made peace, accordingly, in 1295, and engaged to withdraw all his subjects from the Sicilian service. Upon his own death, which followed very soon, James succeeded to the kingdom of Aragon, and ratified the renunciation of Sicily. But the natives of that island had received too deeply the spirit of independence to be thus assigned over by the letter of a treaty. After solemnly abjuring, by their ambassadors, their allegiance to the King of Aragon, they placed the crown upon the head of his brother, Frederick. They maintained the war against Charles II. of Naples, against James of Aragon, their former king, who had bound himself to enforce their submission, and even against the great Roger di Loria, who, upon some discontent with Frederick, deserted their banner, and entered into the Neapolitan service. Peace was at length made in 1300, upon condition that Frederick should

retain during his life the kingdom, which was afterwards to revert to the crown of Naples: a condition not likely to be fulfilled.

Upon the death of Charles II., king of Naples, in 1305, a question arose as to the succession. His eldest son, Charles Martel, had been called by maternal inheritance to the throne of Hungary, and had left at his decease a son, Carobert, the reigning sovereign of that country. According to the laws of representative succession, which were at this time tolerably settled in private inheritance, the crown of Naples ought to have regularly devolved upon that prince. But it was contested by his uncle, Robert, the eldest living son of Charles II., and the cause was pleaded by civilians at Avignon before Pope Clement V., the feudal superior of the Neapolitan kingdom. Reasons of public utility, rather than of legal analogy, seems to have prevailed in the decision which was made in favor of Robert. The course of his reign evinced the wisdom of this determination. ROBERT, a wise and active, though not personally a martial prince, maintained the ascendency of the Guelf faction, and the papal influence connected with it, against the formidable combination of Ghibelin usurpers in Lombardy, and the two emperors Henry VII. and Louis of Bavaria. No male issue survived Robert, whose crown descended to his granddaughter JOANNA. She had been espoused, while a child, to her cousin Andrew, son of Carobert, king of Hungary, who was educated with her in the court of Naples. Auspiciously contrived as this union might seem to silence a subsisting claim upon the kingdom, it proved eventually the source of civil war and calamity for 150 years. Andrew's manners were barbarous, more worthy of his native country than of that polished court wherein he had been bred. He gave himself up to the society of Hungarians, who taught him to believe that a matrimonial crown and derivative royalty were derogatory to a prince who claimed by a paramount hereditary right. In fact, he was pressing the Court of Avignon to permit his own coronation, which would have placed in a very hazardous condition the rights of the queen, with whom he was living on ill terms, when one night he was seized, strangled, and thrown out of a window. Public rumor, in the absence of notorious proof, imputed the guilt of this mysterious assassination to Joanna. Whether historians are authorized to assume her participation in it so confidently as they have generally done, may perhaps be doubted; but the circumstances of Andrew's death were undoubtedly preg-

nant with strong suspicion. Louis, king of Hungary, his brother, a just and stern prince, invaded Naples, partly as an avenger, partly as a conqueror. The queen and her second husband, Louis of Tarento, fled to Provence, where her acquittal, after a solemn, if not an impartial, investigation, was pronounced by Clement VI. Louis, meanwhile, found it more difficult to retain than to acquire the kingdom of Naples; his own dominion required his presence; and Joanna soon recovered her crown. She reigned for thirty years more without the attack of any enemy, but not intermeddling, like her progenitors, in the general concerns of Italy. Childless by four husbands, the succession of Joanna began to excite ambitious speculations. Of all the male descendants of Charles I. none remained but the King of Hungary, and Charles, duke of Durazzo, who had married the queen's niece, and was regarded by her as the presumptive heir to the crown. But, offended by her marriage with Otho of Brunswick, he procured the assistance of a Hungarian army to invade the kingdom, and, getting the queen into his power, took possession of the throne. In this enterprise he was seconded by Urban VI., against whom Joanna had unfortunately declared in the great schism of the Church. She was smothered with a pillow, in prison, by the order of Charles.

TITULAR KINGS OF NAPLES OF THE SECOND HOUSE OF ANJOU.

Louis I., duke of Anjou, son of John, king of France, and uncle of Charles VI., king of France, was adopted by Joanna I. as king of Naples, d. 1384.

Louis II., titular king of Naples, 1384–1417.

Louis III., titular king of Naples, 1417–1434.

Regnier, titular king of Naples, 1434–1480.

§ 26. In the extremity of Joanna's distress she had sought assistance from a quarter too remote to afford it in time for her relief. She adopted Louis, duke of Anjou, eldest uncle of the young king of France, Charles VI., as her heir in the kingdom of Naples and county of Provence. This bequest took effect without difficulty in the latter country. Naples was entirely in the possession of Charles of Durazzo. Louis, however, entered Italy with a very large army, consisting at least of 30,000 cavalry, and, according to some writers, more than double that number. He was joined by many Neapolitan barons attached to the late queen. But, by a fate not unusual in so imperfect a state of military science, their

armament produced no adequate effect, and mouldered away through disease and want of provisions. Louis himself dying not long afterwards, the government of CHARLES III. appeared secure, and he was tempted to accept an offer of the crown of Hungary. This enterprise, equally unjust and injudicious, terminated in his assassination. LADISLAUS, his son, a child ten years old, succeeded to the throne of Naples, under the guardianship of his mother, Margaret, whose exactions of money producing discontent, the party which had supported the late Duke of Anjou became powerful enough to call in his son. Louis II., as he was called, reigned at Naples, and possessed most part of the kingdom, for several years; the young king Ladislaus, who retained some of the northern provinces, fixing his residence at Gaeta. If Louis had prosecuted the war with activity, it seems probable that he would have subdued his adversary. But his character was not very energetic; and Ladislaus, as he advanced to manhood, displaying much superior qualities, gained ground by degrees, till the Angevin barons, perceiving the turn of the tide, came over to his banner, and he recovered his whole dominions.

The kingdom of Naples, at the close of the fourteenth century, was still altogether a feudal government. This had been introduced by the first Norman kings, and the system had rather been strengthened than impaired under the Angevin line. The princes of the blood, who were at one time numerous, obtained extensive domains by way of appanage. The principality of Tarento was a large portion of the kingdom. The rest was occupied by some great families, whose strength, as well as pride, was shown in the number of men-at-arms whom they could muster under their banner. At the coronation of Louis II., the Sanseverini appeared with 1800 cavalry completely equipped. This illustrious house, which had filled all the high offices of state, and changed kings at its pleasure, was crushed by Ladislaus, whose bold and unrelenting spirit well fitted him to bruise the heads of the aristocratic hydra. After thoroughly establishing his government at home, this ambitious monarch directed his powerful resources towards foreign conquests. The ecclesiastical territories had never been secure from rebellion or usurpation; but legitimate sovereigns had hitherto respected the patrimony of the head of the Church. It was reserved for Ladislaus, a feudal vassal of the Holy See, to seize upon Rome itself as his spoil. For several years, while the disordered state of the Church, in consequence of the schism and

the means taken to extinguish it, gave him an opportunity, the King of Naples occupied great part of the papal territories. He was disposed to have carried his arms farther north, and attacked the republic of Florence, if not the states of Lombardy, when his death relieved Italy from the danger of this new tyranny.

§ 27. An elder sister, JOANNA II., reigned at Naples after Ladislaus. Under this queen, destitute of courage and understanding, and the slave of appetites which her age rendered doubly disgraceful, the kingdom relapsed into that state of anarchy from which its late sovereign had rescued it. She adopted first, as her heir and successor, Alfonso, king of Aragon and Sicily, but subsequently revoked her adoption, and substituted in his room another, Louis of Anjou, third in descent of that unsuccesaful dynasty. Upon his death, the queen, who did not long survive him, settled the kingdom on his brother Regnier. The Neapolitans were generally disposed to execute this bequest. But Regnier was unluckily at that time a prisoner to the Duke of Burgundy; and though his wife maintained the cause with great spirit, it was difficult for her, or even for himself, to contend against the King of Aragon, who immediately laid claim to the kingdom. After a contest of several years, Regnier, having experienced the treacherous and selfish abandonment of his friends, yielded the game to his adversary; and Alfonso founded the Aragonese line of sovereigns at Naples, deriving pretensions more splendid than just from Manfred, from the house of Suabia, and from Roger Guiscard.

§ 28. Sicily, after the reign of its deliverer, Frederick I., had unfortunately devolved upon weak or infant princes. The marriage of Maria, queen of Sicily, with Martin, son of the King of Aragon, put an end to the national independence of her country. (See Genealogical Table, p. 221.) Dying without issue, she left the crown to her husband. This was consonant, perhaps, to the received law of some European kingdoms. But, upon the death of Martin, in 1409, his father, also named Martin, king of Aragon, took possession as heir to his son, without any election by the Sicilian Parliament. Thus was Sicily united to the crown of Aragon. Alfonso now enjoyed the three crowns of Aragon, Sicily, and Naples.

In the first year of Alfonso's Neapolitan war, he was defeated and taken prisoner by a fleet of the Genoese, who, as constant enemies of the Catalans in all the naval warfare of the Mediterranean, had willingly lent their aid to the Ange-

vin party. Genoa was at this time subject to Filippo Maria, duke of Milan, and her royal captive was transmitted to his court. But here the brilliant graces of Alfonso's character won over his conqueror, who had no reason to consider the war as his own concern. The king persuaded him, on the contrary, that a strict alliance with an Aragonese dynasty in Naples against the pretensions of any French claimant would be the true policy and best security of Milan. That city, which he had entered as a prisoner, he left as a friend and ally. From this time Filippo Maria Visconti and Alfonso were firmly united in their Italian politics, and formed one weight of the balance which the republics of Venice and Florence kept in equipoise. After the succession of Sforza to the duchy of Milan the same alliance was generally preserved. Sforza had still more powerful reasons than his predecessors for excluding the French from Italy, his own title being contested by the Duke of Orleans, who derived a claim from his mother Valentine, a daughter of Gian Galeazzo Visconti. But the two republics were no longer disposed towards war. Florence had spent a great deal without any advantage in her contest with Filippo Maria; and the new duke of Milan had been the constant personal friend of Cosmo de' Medici, who altogether influenced that republic. At Venice, indeed, he had been at first regarded with very different sentiments; the Senate had prolonged their war against Milan with redoubled animosity after his elevation, deeming him a not less ambitious and more formidable neighbor than the Visconti. But they were deceived in the character of Sforza. Conscious that he had reached an eminence beyond his early hopes, he had no care but to secure for his family the possession of Milan, without disturbing the balance of Lombardy. Venice had little reason to expect further conquests in Lombardy; and if her ambition had inspired the hope of them, she was summoned by a stronger call, that of self-preservation, to defend her numerous and dispersed possessions in the Levant against the arms of Mohammed II. All Italy, indeed, felt the peril that impended from that side; and these various motions occasioned a quadruple league in 1455, between the King of Naples, the Duke of Milan, and the two republics, for the preservation of peace in Italy. One object of this alliance, and the prevailing object with Alfonso, was the implied guaranty of his succession in the kingdom of Naples to his illegitimate son Ferdinand. He had no lawful issue; and there seemed no reason why an acquisition of his own valor should pass against his will to col-

lateral heirs. The pope, as feudal superior of the kingdom, and the Neapolitan Parliament, the sole competent tribunal, confirmed the inheritance of Ferdinand.

Alfonso, surnamed the Magnanimous, was by far the most accomplished sovereign whom the fifteenth century produced. The virtues of chivalry were combined in him with the patronage of letters, and with more than their patronage, a real enthusiasm for learning, seldom found in a king, and especially in one so active and ambitious. This devotion to literature was, among the Italians of that age, almost as sure a passport to general admiration as his more chivalrous perfection. Magnificence in architecture and the pageantry of a splendid court gave fresh lustre to his reign. The Neapolitans perceived with grateful pride that he lived almost entirely among them, in preference to his patrimonial kingdom, and forgave the heavy taxes which faults nearly allied to his virtues, profuseness and ambition, compelled him to impose. But they remarked a very different character in his son. Ferdinand was as dark and vindictive as his father was affable and generous. The barons, who had many opportunities of ascertaining his disposition, began, immediately upon Alfonso's death, to cabal against his succession, turning their eyes first to the legitimate branch of the family, and, on finding that prospect not favorable, to John, titular duke of Calabria, son of Regnier of Anjou, who survived to protest against the revolution that had dethroned him. John was easily prevailed upon to undertake an invasion of Naples, but he underwent the fate that had always attended his family in their long competition for that throne. After some brilliant successes, his want of resources, aggravated by the defection of Genoa, on whose ancient enmity to the house of Aragon he had relied, was perceived by the barons of his party, who, according to the practice of their ancestors, returned one by one to the allegiance of Ferdinand.

§ 29. The peace of Italy was little disturbed, except by a few domestic revolutions, for several years after this Neapolitan war. Even the most short-sighted politicians were sometimes withdrawn from selfish objects by the appalling progress of the Turks, though there was not energy enough in their councils to form any concerted plans for their own security. Venice maintained a long but unsuccessful contest with Mohammed II. for her maritime acquisitions in Greece and Albania; and it was not till after his death relieved Italy from its immediate terror that the ambitious republic endeavored to extend its territories by encroaching on the

house of Este. Nor had Milan shown much disposition towards aggrandizement. Francesco Sforza had been succeeded—such is the condition of despotic governments—by his son Galeazzo, a tyrant more execrable than the worst of the Visconti. His extreme cruelties, and the insolence of a debauchery that gloried in the public dishonor of families, excited a few daring spirits to assassinate him. The Milanese profited by a tyrannicide the perpetrators of which they had not courage or gratitude to protect. The regency of Bonne of Savoy, mother of the infant duke Gian Galeazzo, deserved the praise of wisdom and moderation. But it was overthrown in a few years by Ludovico Sforza, surnamed the Moor, her husband's brother; who, while he proclaimed his nephew's majority, and affected to treat him as a sovereign, hardly disguised in his conduct towards foreign states that he had usurped for himself the sole direction of government.

The annals of one of the few surviving republics, that of Genoa, present to us, during the fifteenth as well as the preceding century, an unceasing series of revolutions, the shortest enumeration of which would occupy several pages. The latest revolution within the compass of this work was in 1488, when the Duke of Milan became sovereign, an Adorno holding the office of doge as his lieutenant.

§ 30. Florence, the most illustrious and fortunate of Italian republics, was now rapidly descending from her rank among free commonwealths, though surrounded with more than usual lustre in the eyes of Europe. We must take up the story of that city from the revolution of 1382, which restored the ancient Guelf aristocracy, or party of the Albizi, to the ascendency of which a popular insurrection had stripped them. Fifty years elapsed during which this party retained the government in its own hands with few attempts at disturbance. Their principal adversaries had been exiled, according to the invariable and perhaps necessary custom of a republic; the populace and inferior artisans were dispirited by their ill-success. But, while crushing with deliberate severity their avowed adversaries, the ruling party had left one family whose prudence gave no reasonable excuse for persecuting them, and whose popularity, as well as wealth, rendered the experiment hazardous. The Medici were among the most considerable of the new or plebeian nobility. From the first years of the fourteenth century their name not very unfrequently occurs in the domestic and military annals of Florence. Throughout the long depression of the popular faction the house of Medici was always regarded as their

consolation and their hope. That house was now represented by Giovanni, whose immense wealth, honorably acquired by commercial dealings, which had already rendered the name celebrated in Europe, was expended with liberality and magnificence. Of a mild temper, and averse to cabals, Giovanni de' Medici did not attempt to set up a party, and contented himself with repressing some fresh encroachments on the popular part of the constitution which the Albizi were disposed to make. They, in their turn, freely admitted him to that share in public councils to which he was entitled by his eminence and virtues; a proof that the spirit of their administration was not illiberally exclusive. But, on the death of Giovanni, his son Cosmo de' Medici, inheriting his father's riches and estimation, with more talents and more ambition, thought it time to avail himself of the popularity belonging to his name. By extensive connections with the most eminent men in Italy, especially with Sforza, he came to be considered as the first citizen of Florence. The oligarchy were more than ever unpopular. Their administration since 1382 had indeed been in general eminently successful; the acquisition of Pisa and of other Tuscan cities had aggrandized the republic, while from the port of Leghorn her ships had begun to trade with Alexandria, and sometimes to contend with the Genoese. But an unprosperous war with Lucca diminished a reputation which was never sustained by public affection. Cosmo and his friends aggravated the errors of the government, which, having lost its wise and temperate leader, Nicola di Uzzano, had fallen into the rasher hands of Rinaldo degl' Albizi. He incurred the blame of being the first aggressor in a struggle which had become inevitable. Cosmo was arrested by command of a gonfalonier devoted to the Albizi, and condemned to banishment (A.D. 1433). But the oligarchy had done too much or too little. The city was full of his friends; the honors conferred upon him in his exile attested the sentiments of Italy. Next year he was recalled in triumph to Florence, and the Albizi were completely overthrown.

It is vain to expect that a victorious faction will scruple to retaliate upon its enemies a still greater measure of injustice than it experienced at their hands. The Albizi had in general respected the legal forms of their free republic, which good citizens, and perhaps themselves, might hope one day to see more effective. The Medici made all their government conducive to hereditary monarchy. A multitude of noble citizens were driven from their country; some were

even put to death. A Balia[4] was appointed for ten years to exclude all the Albizi from magistracy, and, for the sake of this security to the ruling faction, to supersede the legitimate institutions of the republic. After the expiration of this period, the dictatorial power was renewed on pretense of fresh danger, and this was repeated constantly. Cosmo died at an advanced age, in 1464. His son, Piero de' Medici, though not deficient either in virtues or abilities, seemed too infirm in health for the administration of public affairs. A strong opposition was raised to the family pretensions of the Medici. Like all Florentine factions, it trusted to violence; and the chance of arms was not in its favor. From this revolution in 1466, when some of the most considerable citizens were banished, we may date an acknowledged supremacy in the house of Medici, the chief of which nominated the regular magistrates, and drew to himself the whole conduct of the republic.

§ 31. The two sons of Piero, Lorenzo and Julian, especially the former, though young at their father's death, assumed, by the request of their friends, the reins of government (A.D. 1469). It was impossible that, among a people who had so many recollections to attach to the name of liberty, among so many citizens whom their ancient constitution invited to public trust, the control of a single family should excite no dissatisfaction. But, if the people's wish to resign their freedom gives a title to accept the government of a country, the Medici were no usurpers. That family never lost the affections of the populace. The cry of Palle, Palle (their armorial distinction), would at any time rouse the Florentines to defend the chosen patrons of the republic. If their substantial influence could before be questioned, the conspiracy of the Pazzi, wherein Julian perished, excited an enthusiasm for the surviving brother that never ceased during his life. Nor was this any thing unnatural, or any severe reproach to Florence. All around, in Lombardy and Romagna, the lamp of liberty had long since been extinguished in blood. The freedom of Siena and Genoa was dearly purchased by revolutionary proscriptions; that of Venice was only a name. The republic which had preserved longest, and with greatest purity, that vestal fire, had at least no relative degradation to fear in surrendering herself to Lorenzo de' Medici. I need not in this place expatiate upon what the name

[4] A Balia was a temporary delegation of sovereignty to a number, generally a considerable number, of citizens, who during the period of their dictatorship named the magistrates, instead of drawing them by lot, and banished suspected individuals.

instantly suggests—the patronage of science and art, and the constellation of scholars and poets, of architects and painters, whose reflected beams cast their radiance around his head. His political reputation, though far less durable, was in his own age as conspicuous as that which he acquired in the history of letters. Equally active and sagacious, he held his way through the varying combinations of Italian policy, always with credit, and generally with success. Florence, if not enriched, was, upon the whole, aggrandized during his administration, which was exposed to some severe storms from the unscrupulous adversaries, Sixtus IV. and Ferdinand of Naples, whom he was compelled to resist. As a patriot, indeed, we never can bestow upon Lorenzo de' Medici the meed of disinterested virtue. He completed that subversion of the Florentine republic which his two immediate ancestors had so well prepared. The two councils, her regular legislature, he superseded by a permanent Senate of seventy persons; while the gonfalonier and priors, become a mockery and pageant to keep up the illusion of liberty, were taught that in exercising a legitimate authority without the sanction of their prince—a name now first heard at Florence—they incurred the risk of punishment for their audacity. Even the total dilapidation of his commercial wealth was repaired at the cost of the state; and the republic disgracefully screened the bankruptcy of the Medici by her own. But, compared with the statesmen of his age, we can reproach Lorenzo with no heinous crime. He had many enemies; his descendants had many more; but no unequivocal charge of treachery or assassination has been substantiated against his memory. So much was Lorenzo esteemed by his contemporaries, that his premature death has frequently been considered as the cause of those unhappy revolutions that speedily ensued, and which his foresight would, it is imagined, have been able to prevent; an opinion which, whether founded in probability or otherwise, attests the common sentiment about his character (A.D. 1492).

§ 32. If, indeed, Lorenzo de' Medici could not have changed the destinies of Italy, however premature his death may appear if we consider the ordinary duration of human existence, it must be admitted that for his own welfare, perhaps for his glory, he had lived out the full measure of his time. An age of new and uncommon revolutions was about to arise, among the earliest of which the temporary downfall of his family was to be reckoned. The long-contested succession of Naples was again to involve Italy in war. The

ambition of strangers was once more to desolate her plains. Ferdinand, king of Naples, had reigned for thirty years after the discomfiture of his competitor with success and ability, but with a degree of ill faith as well as tyranny towards his subjects that rendered his government deservedly odious. His son Alfonso, whose succession seemed now near at hand, was still more marked by these vices than himself. Meanwhile, the pretensions of the house of Anjou had legally descended, after the death of old Regnier, to Regnier, duke of Lorraine, his grandson by a daughter; whose marriage into the house of Lorraine had, however, so displeased her father, that he bequeathed his Neapolitan title, along with his real patrimony, the county of Provence, to a count of Maine; by whose testament they became vested in the crown of France. Louis XI., while he took possession of Provence, gave himself no trouble about Naples. But Charles VIII., inheriting his father's ambition without that cool sagacity which restrained it in general from impracticable attempts, and far better circumstanced at home than Louis had ever been, was ripe for an expedition to vindicate his pretension upon Naples, or even for more extensive projects. It was now two centuries since the kings of France had begun to aim, by intervals, at conquests in Italy. The long English wars changed all views of the court of France to self-defense. But in the fifteenth century its plans of aggrandizement beyond the Alps began to revive. Several times, as I have mentioned, the republic of Genoa put itself under the dominion of France. The dukes of Savoy, possessing most part of Piedmont, and masters of the mountain-passes, were, by birth, intermarriage, and habitual policy, completely dedicated to the French interests. Ludovico Sforza, who had usurped the guardianship of his nephew, the Duke of Milan, found, as that young man advanced to maturity, that one crime required to be completed by another. To depose and murder his ward was, however, a scheme that prudence, though not conscience, bade him hesitate to execute. He had rendered Ferdinand of Naples and Piero de' Medici, Lorenzo's heir, his decided enemies. A revolution at Milan would be the probable result of his continuing in usurpation. In these circumstances Ludovico Sforza excited the King of France to undertake the conquest of Naples (A.D. 1439). But in relieving himself from an immediate danger, Ludovico Sforza overlooked the consideration that the presumptive heir of the King of France claimed by an ancient title that principality of Milan which he was compassing by usur-

pation and murder. But neither Milan nor Naples was free from other claimants than France, nor was she reserved to enjoy unmolested the spoil of Italy. A louder and a louder strain of warlike dissonance will be heard from the banks of the Danube, and from the Mediterranean Gulf. The dark and wily Ferdinand, the rash and lively Maximilian, are preparing to hasten into the lists; the schemes of ambition are assuming a more comprehensive aspect; and the controversy of Neapolitan succession is to expand into the long rivalry between the houses of France and Austria. But here, while Italy is still untouched, and before as yet the first lances of France gleam along the defiles of the Alps, we close the history of the Middle Ages.

NOTE TO CHAPTER III.

AUTHORITIES FOR ITALIAN HISTORY.

The authorities upon which the preceding chapter is founded are chiefly the following: 1. Muratori's Annals of Italy (twelve volumes in 4to, or eighteen in 8vo) comprehend a summary of its history from the beginning of the Christian era to the peace of Aix-la-Chapelle. The volumes relating to the Middle Ages, into which he has digested the original writers contained in his great collection, "Scriptores Rerum Italicarum," are by much the best; and of these, the part which extends from the seventh or eighth to the end of the twelfth century is the fullest and most useful. Muratori's accuracy is in general almost implicitly to be trusted, and his plain integrity speaks in all his writings; but his mind was not philosophical enough to discriminate the wheat from the chaff, and his habits of life induced him to annex an imaginary importance to the dates of diplomas and other inconsiderable matters. His narrative presents a mere skeleton, devoid of juices; and besides its intolerable aridity, it labors under that confusion which a merely chronological arrangement of concurrent and independent events must always produce. 2. The Dissertations on Italian Antiquities, by the same writer, may be considered either as one or two works. In Latin they form six volumes in folio, enriched with a great number of original documents. In Italian they are freely translated by Muratori himself, abridged, no doubt, and without most of the original instruments, but well furnished with quotations, and abundantly sufficient for most purposes. They form three volumes in quarto. 3. St. Marc, a learned and laborious Frenchman, has written a chronological abridgment of Italian history, somewhat in the manner of Hénault, but so strangely divided by several parallel columns in every page, that I could hardly name a book more inconvenient to the reader. His knowledge, like Muratori's, lay a good deal in points of minute inquiry; and he is chiefly to be valued in ecclesiastical history. The work descends only to the thirteenth century. 4. Denina's "Rivoluzioni d'Italia," originally published in 1769, is a perspicuous and lively book, in which the principal circumstances are well selected. It is not, perhaps, free from errors in fact, and still less from those of opinion; but, till lately, I do not know from what source a general acquaintance with the history of Italy could have been so easily derived. 5. The publication of M. Sismondi's "Histoire des Républiques Italiennes" has thrown a blaze of light around the most interesting, at least, in many respects, of European countries during the Middle Ages. I am happy to bear witness, so far as my own studies have enabled me, to the learning and diligence of this writer, qualities which the world is sometimes apt not to suppose where they perceive so much eloquence and philosophy. I can not express my opinion of M. Sismondi in this respect more strongly than by saying that his work has almost superseded the Annals

of Muratori; I mean from the twelfth century, before which period his labor hardly begins. Though doubtless not more accurate than Muratori, he has consulted a much more extensive list of authors; and, considered as a register of facts alone, his history is incomparably more useful. These are combined in so skillful a manner as to diminish, in a great degree, that inevitable confusion which arises from frequency of transition and want of general unity. It is much to be regretted that, from too redundant details of unnecessary circumstances, and sometimes, if I may take the liberty of saying so, from unnecessary reflections, M. Sismondi has run into a prolixity which will probably intimidate the languid students of our age. It is the more to be regretted, because the History of Italian Republics is calculated to produce a good far more important than storing the memory with historical facts—that of communicating to the reader's bosom some sparks of the dignified philosophy, the love for truth and virtue, which lives along its eloquent pages. 6. To Muratori's collection of original writers, the "Scriptores Rerum Italicarum," in twenty-four volumes in folio, I have paid considerable attention; perhaps there is no volume of it which I have not more or less consulted.

CHAPTER IV.

THE HISTORY OF SPAIN TO THE CONQUEST OF GRANADA.

§ 1. Kingdom of the Visigoths. § 2. Conquest of Spain by the Moors. Gradual Revival of the Spanish Nation. § 3. Kingdoms of Leon, Aragon, Navarre, and Castile, successively formed. § 4. Chartered Towns of Castile. § 5. Military Orders. § 6. Conquests of Ferdinand III. and James of Aragon. § 7. Causes of the Delay in expelling the Moors. § 8. History of Castile continued. Character of the Government. Peter the Cruel. § 9. House of Trastamare. John II. Henry IV. § 10. Constitution of Castile. National Assemblies or Cortes. Their constituent Parts. § 11. Right of Taxation. § 12. Forms of the Cortes. § 13. Legislation. § 14. Other Rights of the Cortes. § 15. Privy Council of Castile. § 16. Administration of Justice. § 17. Imperfections of the Constitution. § 18. Aragon. Its history in the Fourteenth and Fifteenth Centuries. Disputed Succession. § 19. Constitution of Aragon. § 20. Free Spirit of its Aristocracy. Privilege of Union. § 21. Powers of the Justiza. Legal Securities. Illustrations. § 22. Other Constitutional Laws. Cortes of Aragon. § 23. Valencia and Catalonia. § 24. Union of two Crowns by the Marriage of Ferdinand and Isabella. § 25. Conquest of Granada.

§ 1. THE history of Spain during the Middle Ages ought to commence with the dynasty of the Visigoths—a nation among the first that assaulted and overthrew the Roman Empire, and whose establishment preceded by nearly half a century the invasion of Clovis. Vanquished by that conqueror in the battle of Poitiers, the Gothic monarchs lost their extensive dominions in Gaul, and transferred their residence from Toulouse to Toledo. The Visigothic monarchy differed in several respects from that of the Franks during the same period. The crown was less hereditary, or at least the regular succession was more frequently disturbed. The prelates had a still more commanding influence in temporal government. The distinction of Romans and barbarians was less marked, the laws more uniform, and approaching nearly to the imperial code. The power of the sovereign was perhaps more limited by an aristocratical council than in France, but it never yielded to the dangerous influence of mayors of the palace. Civil wars and disputed successions were very frequent, but the integrity of the kingdom was not violated by the custom of partition.

§ 2. Spain, after remaining for nearly three centuries in the possession of the Visigoths, fell under the yoke of the Saracens in 712. The fervid and irresistible enthusiasm which distinguished the youthful period of Mohammedanism might sufficiently account for this conquest, even if we could

not assign additional causes—the factions which divided the Goths, the resentment of disappointed pretenders to the throne, the provocations, as has been generally believed, of Count Julian,[1] and the temerity that risked the fate of an empire on the chances of a single battle. It is more surprising that a remnant of this ancient monarchy should not only have preserved its national liberty and name in the northern mountains, but waged for some centuries a successful, and generally an offensive warfare against the conquerors, till the balance was completely turned in its favor, and the Moors were compelled to maintain almost as obstinate and protracted a contest for a small portion of the peninsula. But the Arabian monarchs of Cordova found in their success and imagined security a pretext for indolence: even in the cultivation of science and contemplation of the magnificent architecture of their mosques and palaces they forgot their poor but daring enemies in the Asturias; while, according to the nature of despotism, the fruits of wisdom or bravery in one generation were lost in the follies and effeminacy of the next. Their kingdom was dismembered by successful rebels, who formed the states of Toledo, Huesca, Saragossa, and others less eminent; and these, in their own mutual contests, not only relaxed their natural enmity towards the Christian princes, but sometimes sought their alliance.

§ 3. The last attack which seemed to endanger the reviving monarchy of Spain was that of Almanzor, the illustrious vizier of Haccham II., towards the end of the tenth century, wherein the city of Leon, and even the shrine of Compostella, were burned to the ground. For some ages before this transient reflux, gradual encroachments had been made upon the Saracens, and the kingdom originally styled of Oviedo,

[1] The story of Cava, daughter of Count Julian, whose seduction by Roderic, the last Gothic king, impelled her father to invite the Moors into Spain, enters largely into the cycle of Castilian romance and into the grave narratives of every historian. It can not, however, be traced in extant writings higher than the eleventh century, when it appears in the Chronicle of the Monk of Silos. The most critical investigators of history, therefore, have treated the story as too apocryphal to be stated as a fact. Gayangos ("History of the Mohammedan Dynasties in Spain") points out that the account of Julian, in the "Chronicon Silense," is borrowed from some Arabian authority; and this he proves by several writers from the ninth century downward, "all of whom mention, more or less explicitly, the existence of a man living in Africa, and named Ilyan, who helped the Arabs to make a conquest of Spain; to which I ought to add that the rape of Ilyan's daughter, and the circumstances attending it, may also be read in detail in the Mohammedan authors who preceded the monk of Silos." The result of this learned writer's investigation is that Ilyan really existed, that he was a Christian chief, settled, not in Spain, but on the African coast, and that he betrayed, not his country (except, indeed, as he was probably of Spanish descent), but the interests of his religion, by assisting the Saracens to subjugate the Gothic kingdom.

the seat of which was removed to Leon in 914, had extended its boundary to the Douro, and even to the mountainous chain of the Guadarrama. The province of Old Castile, thus denominated, as is generally supposed, from the castles erected while it remained a march or frontier against the Moors, was governed by hereditary counts, elected originally by the provincial aristocracy, and virtually independent, it seems probable, of the kings of Leon, though commonly serving them in war as brethren of the same faith and nation.

While the kings of Leon were thus occupied in recovering the western provinces, another race of Christian princes grew up silently under the shadow of the Pyrenean mountains. Nothing can be more obscure than the beginnings of those little states which were formed in Navarre and the country of Soprarbe. They might, perhaps, be almost contemporaneous with the Moorish conquests. On both sides of the Pyrenees dwelt an aboriginal people, the last to undergo the yoke, and who had never acquired the language, of Rome. We know little of these intrepid mountaineers in the dark period which elapsed under the Gothic and Frank dynasties, till we find them cutting off the rear-guard of Charlemagne in Roncesvalles, and maintaining at least their independence, though seldom, like the kings of Asturias, waging offensive war against the Saracens. The town of Jaca, situated among long narrow valleys that intersect the southern ridges of the Pyrenees, was the capital of a little free state, which afterwards expanded into the monarchy of Aragon.[1] A territory rather more extensive belonged to Navarre, the kings of which fixed their seas at Pampelona. Biscay seems to have been divided between this kingdom and that of Leon. The connection of Aragon or Soprarbe and Navarre was very intimate, and they were often united under a single chief.

At the beginning of the eleventh century, Sancho the Great, king of Navarre and Aragon, was enabled to render his second son Ferdinand count, or, as he assumed the title, king of Castile. This effectually dismembered that province from the kingdom of Leon; but their union soon became more complete than ever, though with a reversed supremacy. Bermudo III., king of Leon, fell in an engagement with the new king of Castile, who had married his sister; and Ferdinand, in her right, or in that of conquest, became master of the

[1] The Fueros, or written laws of Jaca, were perhaps more ancient than any local customary in Europe. Alfonso III. confirms them by name of "the ancient usages of Jaca." They prescribe the descent of lands and movables, as well as the election of municipal magistrates.

united monarchy. This cessation of hostilities between the Christian states enabled them to direct a more unremitting energy against their ancient enemies, who were now sensibly weakened by the various causes of decline to which I have already alluded. During the eleventh century the Spaniards were almost always superior in the field; the towns which they began by pillaging, they gradually possessed; their valor was heightened by the customs of chivalry, and inspired by the example of the Cid; and before the end of this age Alfonso VI. recovered the ancient metropolis of the monarchy, the city of Toledo. This was the severest blow which the Moors had endured, and an unequivocal symptom of that change in their relative strength, which, from being so gradual, was the more irretrievable. Calamities scarcely inferior fell upon them in a different quarter. The kings of Aragon (a title belonging originally to a little district upon the river of that name) had been cooped up almost in the mountains by the small Moorish states north of the Ebro, especially that of Huesca. About the middle of the eleventh century, they began to attack their neighbors with success; the Moors lost one town after another, till, in 1118, exposed and weakened by the reduction of all these places, the city of Saragossa, in which a line of Mohammedan princes had flourished for several ages, became the prize of Alfonso I. and the capital of his kingdom. The southern parts of what is now the province of Aragon were successively reduced during the twelfth century; while all New Castile and Estremadura became annexed in the same gradual manner to the dominion of the descendants of Alfonso VI.

Although the feudal system can not be said to have obtained in the kingdoms of Leon and Castile, their peculiar situation gave the aristocracy a great deal of the same power and independence which resulted in France and Germany from that institution. The territory successively recovered from the Moors, like waste lands reclaimed, could have no proprietor but the conquerors, and the prospect of such acquisitions was a constant incitement to the nobility of Spain, especially to those who had settled themselves on the Castilian frontier. In their new conquests they built towns, and invited Christian settlers, the Saracen inhabitants being commonly expelled, or voluntarily retreating to the safer provinces of the South. Thus Burgos was settled by a count of Castile about 880; another fixed his seat at Osma; a third at Sepulveda; a fourth at Salamanca. These cities were not free

from incessant peril of a sudden attack till the union of the two kingdoms under Ferdinand I., and consequently the necessity of keeping in exercise a numerous and armed population gave a character of personal freedom and privilege to the inferior classes which they hardly possessed at so early a period in any other monarchy. Villenage seems never to have been established in the Hispano-Gothic kingdoms, Leon and Castile; though I confess it was far from being unknown in that of Aragon, which had formed its institutions on a different pattern. Since nothing makes us forget the arbitrary distinctions of rank so much as participation in any common calamity, every man who had escaped the great shipwreck of liberty and religion in the mountains of Asturias was invested with a personal dignity, which gave him value in his own eyes and those of his country. It is probably this sentiment transmitted to posterity, and gradually fixing the national character, that has produced the elevation of manner remarked by travellers in the Castilian peasant. But while these acquisitions of the nobility promoted the grand object of winning back the peninsula from its invaders, they by no means invigorated the government or tended to domestic tranquillity.

§ 4. A more interesting method of securing the public defense was by the institution of chartered towns or communities. These were established at an earlier period than in France and England, and were, in some degree, of a peculiar description. Instead of purchasing their immunities, and almost their personal freedom, at the hands of a master, the burgesses of Castilian towns were invested with civil rights and extensive property on the more liberal condition of protecting their country. The fuero, or original charter of a Spanish community, was properly a compact, by which the king or lord granted a town and adjacent district to the burgesses, with various privileges, and especially that of choosing magistrates and a common council, who were bound to conform themselves to the laws prescribed by the founder. These laws, civil as well as criminal, though essentially derived from the ancient code of the Visigoths, which continued to be the common law of Castile till the fourteenth or fifteenth century, varied from each other in particular usages, which had probably grown up and been established in these districts before their legal confirmation. The territory held by chartered towns was frequently very extensive, far beyond any comparison with corporations in our own country or in France; including the estates of private land-holders,

subject to the jurisdiction and control of the municipality as well as its inalienable demesnes, allotted to the maintenance of the magistrates and other public expenses. In every town the king appointed a governor to receive the usual tributes, and watch over the police and the fortified places within the district; but the administration of justice was exclusively reserved to the inhabitants and their elected judges. Even the executive power of the royal officer was regarded with jealousy; he was forbidden to use violence towards any one without legal process; and, by the fuero of Logroño, if he attempted to enter forcibly into a private house he might be killed with impunity.

In recompense for such liberal concessions, the incorporated towns were bound to certain money payments and to military service. This was absolutely due from every inhabitant, without dispensation or substitution, unless in case of infirmity. The royal governor and the magistrates, as in the simple times of primitive Rome, raised and commanded the militia. Every man of a certain property was bound to serve on horseback, and was exempted in return from the payment of taxes. This produced a distinction between the *caballeros*, or noble class, and the *pecheros*, or payers of tribute. But the distinction appears to have been founded only upon wealth, as in the Roman equites, and not upon hereditary rank, though it most likely prepared the way for the latter. The horses of these caballeros could not be seized for debt; in some cases they were exclusively eligible to magistracy; and their honor was protected by laws which rendered it highly penal to insult or molest them. But the civil rights of rich and poor in courts of justice were as equal as in England.

§ 5. The progress of the Christian arms in Spain may in part be ascribed to another remarkable feature in the constitution of that country, the military orders. These had already been tried with signal effect in Palestine; and the similar circumstances of Spain easily led to an adoption of the same policy. In a very few years after the first institution of the Knights Templars, they were endowed with great estates, or rather districts, won from the Moors, on condition of defending their own and the national territory. These lay chiefly in the parts of Aragon beyond the Ebro, the conquest of which was then recent and insecure. So extraordinary was the respect for this order and that of St. John, and so powerful the conviction that the hope of Christendom rested upon their valor, that Alfonso the First, king of Aragon, dy-

ing childless, bequeathed to them his whole kingdom. The states of Aragon annulled, as may be supposed, this strange testament; but the successor of Alfonso was obliged to pacify the ambitious knights by immense concessions of money and territory; stipulating even not to make peace with the Moors against their will. In imitation of these great military orders common to all Christendom, there arose three Spanish institutions of a similar kind, the orders of Calatrava, Santiago, and Alcantara. The first of these was established in 1158; the second and most famous had its charter from the pope in 1175, though it seems to have existed previously; the third branched off from that of Calatrava at a subsequent time. These were military colleges, having their walled towns in different parts of Castile, and governed by an elective grand master, whose influence in the state was at least equal to that of any of the nobility. In the civil dissensions of the fourteenth and fifteenth centuries, the chiefs of these incorporated knights were often very prominent.

§ 6. The kingdoms of Leon and Castile were unwisely divided anew by Alfonso VII. between his sons Sancho and Ferdinand, and this produced not only a separation but a revival of the ancient jealousy with frequent wars for near a century. At length, in 1238, Ferdinand III., king of Castile, reunited forever the two branches of the Gothic monarchy. He employed their joint strength against the Moors, whose dominion, though it still embraced the finest provinces of the peninsula, was sinking by internal weakness, and had never recovered a tremendous defeat at Banos di Toloso, a few miles from Baylen, in 1210. Ferdinand, bursting into Andalusia, took its great capital, the city of Cordova, not less ennobled by the cultivation of Arabian science, and by the names of Avicenna and Averroes than by the splendid works of a rich and munificent dynasty. (A.D. 1236.) In a few years more Seville was added to his conquests, and the Moors lost their favorite regions on the banks of the Guadalquivir. James I. of Aragon, the victories of whose long reign gave him the surname of Conqueror, reduced the city and kingdom of Valencia, the Balearic isles, and the kingdom of Murcia; but the last was annexed, according to compact, to the crown of Castile.

§ 7. It could hardly have been expected about the middle of the thirteenth century, when the splendid conquests of Ferdinand and James had planted the Christian banner on the three principal Moorish cities, that 250 years were yet to elapse before the rescue of Spain from their yoke should be

completed. Ambition, religious zeal, national enmity, could not be supposed to pause in a career which now seemed to be obstructed by such moderate difficulties; yet we find, on the contrary, the exertions of the Spaniards begin from this time to relax, and their acquisitions of territory to become more slow. One of the causes, undoubtedly, that produced this unexpected protraction of the contest was the superior means of resistance which the Moors found in retreating. Their population, spread originally over the whole of Spain, was now condensed, and, if I may so say, become no further compressible, in a single province. It had been mingled, in the northern and central parts, with the Mozarabic Christians, their subjects and tributaries, not perhaps treated with much injustice, yet naturally and irremediably their enemies. Toledo and Saragossa, when they fell under a Christian sovereign, were full of these inferior Christians, whose long intercourse with their masters has infused the tones and dialect of Arabia into the language of Castile. But in the twelfth century the Moors, exasperated by defeat and jealous of secret disaffection, began to persecute their Christian subjects, till they renounced or fled for their religion; so that in the southern provinces scarcely any professors of Christianity were left at the time of Ferdinand's invasion. An equally severe policy was adopted on the other side. The Moors had been permitted to dwell in Saragossa as the Christians had dwelt before, subjects, not slaves; but on the capture of Seville they were entirely expelled, and new settlers invited from every part of Spain. The strong fortified towns of Andalusia, such as Gibraltar, Algeciras, Tariffa, maintained also a more formidable resistance than had been experienced in Castile; they cost tedious sieges, were sometimes recovered by the enemy, and were always liable to his attacks. But the great protection of the Spanish Mohammedans was found in the alliance and ready aid of their kindred beyond the Straits. Accustomed to hear of the African Moors only as pirates, we can not easily conceive the powerful dynasties, the warlike chiefs, the vast armies, which for seven or eight centuries illustrate the annals of that people. Their assistance was always afforded to the true believers in Spain, though their ambition was generally dreaded by those who stood in need of their valor.

Probably, however, the kings of Granada were most indebted to the indolence which gradually became characteristic of their enemies. By the cession of Murcia to Castile, the kingdom of Aragon shut itself out from the possibility

of extending those conquests which had ennobled her earlier sovereigns; and their successors, not less ambitious and enterprising, diverted their attention towards objects beyond the peninsula. The Castilian, patient and undesponding in bad success, loses his energy as the pressure becomes less heavy, and puts no ordinary evil in comparison with the exertions by which it must be removed. The greater part of his country freed by his arms, he was content to leave the enemy in a single province rather than undergo the labor of making his triumph complete.

§ 8. If a similar spirit of insubordination had not been found compatible in earlier ages with the aggrandizement of the Castilian monarchy (A.D. 1252), we might ascribe its want of splendid successes against the Moors to the continued rebellions which disturbed that Government for more than a century after the death of Ferdinand III. His son Alfonso X. might justly acquire the surname of Wise for his general proficiency in learning, and especially in astronomical science, if these attainments deserve praise in a king who was incapable of preserving his subjects in their duty. As a legislator, Alfonso, by his code of the Siete Partidas, sacrificed the ecclesiastical rights of his crown to the usurpation of Rome; and his philosophy sunk below the level of ordinary prudence when he permitted the phantom of an imperial crown in Germany to seduce his hopes for almost twenty years. For the sake of such an illusion he would even have withdrawn himself from Castile, if the states had not remonstrated against an expedition that would probably have cost him the kingdom. In the latter years of his turbulent reign, Alfonso had to contend against his son. The right of representation was hitherto unknown in Castile, which had borrowed little from the customs of feudal nations. By the received law of succession the nearer was always preferred to the more remote, the son to the grandson. Alfonso X. had established the different maxim of representation by his code of the Siete Partidas, the authority of which, however, was not universally acknowledged. The question soon came to an issue: on the death of his eldest son, Ferdinand, leaving two male children, Sancho, their uncle, asserted his claim, founded upon the ancient Castilian right of succession; and this chiefly, no doubt, through fear of arms, though it did not want plausible arguments, was ratified by an assembly of the cortes, and secured, notwithstanding the king's reluctance, by the courage of Sancho. But the descendants of Ferdinand, generally called the in-

fants of la Cerda, by the protection of France, to whose royal family they were closely allied, and of Aragon, always prompt to interfere in the disputes of a rival people, continued to assert their pretensions for more than half a century, and, though they were not very successful, did not fail to aggravate the troubles of their country.

The annals of Sancho IV. (A.D. 1284), and his two immediate successors, Ferdinand IV. (A.D. 1295) and Alfonso XI. (A.D. 1132), present a series of unhappy and dishonorable civil dissensions with too much rapidity to be remembered or even understood. Although the Castilian nobility had no pretense to the original independence of the French peers, or to the liberties of feudal tenure, they assumed the same privilege of rebelling upon any provocation from their sovereign. When such occurred, they seem to have been permitted, by legal custom, to renounce their allegiance by a solemn instrument, which exempted them from the penalties of treason. A very few families composed an oligarchy, the worst and most ruinous condition of political society, alternately the favorites and ministers of the prince, or in arms against him. If unable to protect themselves in their walled towns, and by the aid of their faction, these Christian patriots retired to Aragon or Granada, and excited an hostile power against their country, and perhaps their religion. There is indeed some apology for the conduct of the nobles in the character of their sovereigns, who had but one favorite method of avenging a dissembled injury, or anticipating a suspected treason. But whatever violence and arbitrary spirit might be imputed to Sancho and Alfonso was forgotten in the unexampled tyranny of Peter the Cruel (A.D. 1350). The history of his reign charges him with the murder of his wife, Blanche of Bourbon, most of his brothers and sisters, with Eleanor Gusman, their mother, many Castilian nobles, and multitudes of the commonalty; besides continual outrages of licentiousness, and especially a pretended marriage with a noble lady of the Castrian family. At length a rebellion was headed by his illegitimate brother, Henry, count of Trastamare, with the assistance of Aragon and Portugal. This, however, would probably have failed of dethroning Peter, a resolute prince, and certainly not destitute of many faithful supporters, if Henry had not invoked the more powerful succor of Bertrand du Guesclin, and the companies of adventure who, after the pacification between France and England, had lost the occupation of war, and retained only that of plunder. With mercenaries so disciplined

it was in vain for Peter to contend; but, abandoning Spain for a moment, he had recourse to a more powerful weapon from the same armory. Edward the Black Prince, then resident at Bordeaux, was induced by the promise of Biscay to enter Spain as the ally of Castile; and at the great battle of Navarette he continued lord of the ascendant over those who had so often already been foiled by his prowess (A.D. 1367). Du Guesclin was made prisoner; Henry fled to Aragon, and Peter remounted the throne. But a second revolution was at hand: the Black Prince, whom he had ungratefully offended, withdrew into Guienne; and he lost his kingdom and life in a second short contest with his brother.

§ 9. A more fortunate period began with the accession of Henry II. (A.D. 1368). His own reign was hardly disturbed by any rebellion; and though his successors, John I. (A.D. 1379) and Henry III. (A.D. 1390), were not altogether so unmolested, especially the latter, who ascended the throne in his minority, yet the troubles of their time were slight in comparison with those formerly excited by the houses of Lara and Haro, both of which were now happily extinct. Though Henry II.'s illegitimacy left him no title but popular choice, his queen was sole representative of the Cerdas, the offspring, as has been mentioned above, of Sancho IV.'s elder brother, and, by the extinction of the younger branch, unquestioned heiress of the royal line. Some years afterwards, by the marriage of Henry III. with Catherine, daughter of John of Gaunt and of Constance, an illegitimate child of Peter the Cruel, her pretensions, such as they were, became merged in the crown.

No kingdom could be worse prepared to meet the disorders of a minority than Castile, and in none did the circumstances so frequently recur. John II. was but fourteen months old at his accession (A.D. 1406), and but for the disinterestedness of his uncle Ferdinand, the nobility would have been inclined to avert the danger by placing that prince upon the throne. In this instance, however, Castile suffered less from faction during the infancy of her sovereign than in his maturity. The queen dowager, at first jointly with Ferdinand, and solely after his accession to the crown of Aragon, administered the government with credit. Fifty years had elapsed at her death, in 1418, since the elevation of the house of Trastamare, who had entitled themselves to public affection by conforming themselves more strictly than their predecessors to the constitutional laws of Castile, which were never so well established as during this period. This

comparatively golden period ceases at the majority of John II. His reign was filled up by a series of conspiracies and civil wars, headed by his cousins John and Henry, the infants of Aragon, who enjoyed very extensive territories in Castile, by the testament of their father Ferdinand. Their brother, the king of Aragon, frequently lent the assistance of his arms. John himself, the elder of these two princes, by marriage with the heiress of the kingdom of Navarre, stood in a double relation to Castile, as a neighboring sovereign, and as a member of the native oligarchy. These conspiracies were all ostensibly directed against the favorite of John I., Alvaro de Luna, who retained for five-and-thirty years an absolute control over his feeble master. The adverse faction naturally ascribed to this powerful minister every criminal intention and all public mischiefs. He was certainly not more scrupulous than the generality of statesmen, and appears to have been rapacious in accumulating wealth. But there was an energy and courage about Alvaro de Luna which distinguishes him from the cowardly sycophants who usually rise by the favor of weak princes; and Castile probably would not have been happier under the administration of his enemies. His fate is among the memorable lessons of history. After a life of troubles endured for the sake of this favorite, sometimes a fugitive, sometimes a prisoner, his son heading rebellions against him, John II. suddenly yielded to an intrigue of the palace, and adopted sentiments of dislike towards the man he had so long loved. No substantial charge appears to have been brought against Alvaro de Luna, except that general malversation which it was too late for the king to object to him. The real cause of John's change of affection was, most probably, the insupportable restraint which the weak are apt to find in that spell of a commanding understanding which they dare not break—the torment of living subject to the ascendant of an inferior, which has produced so many examples of fickleness in sovereigns. That of John II. is not the least conspicuous. Alvaro de Luna was brought to a summary trial and beheaded; his estates were confiscated. He met his death with the intrepidity of Strafford, to whom he seems to have borne some resemblance in character.

John II. did not long survive his minister, dying in 1454, after a reign that may be considered as inglorious compared with any except that of his successor. If the father was not respected, the son fell completely into contempt. A powerful confederacy of disaffected nobles was formed against the

royal authority, and Henry IV. was deposed in an assembly of their faction at Avila with a sort of theatrical pageantry which has often been described (A.D. 1465). The confederates set up Alfonso, the king's brother, and a civil war of some duration ensued, in which they had the support of Aragon. The Queen of Castile had at this time borne a daughter, whom the enemies of Henry IV., and indeed no small part of his adherents, were determined to treat as spurious. Accordingly, after the death of Alfonso, his sister Isabel was considered as heiress of the kingdom. She might have aspired, with the assistance of the confederates, to its immediate possession; but, avoiding the odium of a contest with her brother, Isabel agreed to a treaty, by which the succession was absolutely settled upon her (A.D. 1469). This arrangement was not long afterwards followed by the union of that princess with Ferdinand, son of the King of Aragon. This marriage was by no means acceptable to a part of the Castilian oligarchy, who had preferred a connection with Portugal. And as Henry had never lost sight of the interests of one whom he considered, or pretended to consider, as his daughter, he took the first opportunity of revoking his forced disposition of the crown and restoring the direct line of succession in favor of the Princess Joanna. Upon his death, in 1474, the right was to be decided by arms. The scale between the two parties was pretty equally balanced till, the King of Portugal having been defeated at Toro in 1476, Joanna's party discovered their inability to prosecute the war by themselves, and successively made their submission to Ferdinand and Isabella.

§ 10. The Castilians always considered themselves as subject to a legal and limited monarchy. For several ages the crown was elective, as in most nations of German origin, within the limits of one royal family. In general, of course, the public choice fell upon the nearest heir; and it became a prevailing usage to elect a son during the lifetime of his father, till about the eleventh century a right of hereditary succession was clearly established.

In the original Gothic monarchy of Spain, civil as well as ecclesiastical affairs were decided in national councils, the acts of many of which are still extant, and have been published in ecclesiastical collections. To these assemblies the dukes and other provincial governors, and in general the principal individuals of the realm, were summoned along with spiritual persons. This double aristocracy of Church and State continued to form the great council of advice and

consent in the first ages of the new kingdoms of Leon and Castile. The prelates and nobility, or rather some of the more distinguished nobility, appear to have concurred in all general measures of legislation, as we infer from the preamble of their statutes. It would be against analogy, as well as without evidence, to suppose that any representation of the commons had been formed in the earlier period of the monarchy. In the preamble of laws passed in 1020, and at several subsequent times during that and the ensuing century, we find only the bishops and magnates recited as present. But in 1188, the first year of the reign of Alfonso IX., deputies from the Castilian towns are expressly mentioned; and from that era were constant and necessary parts of those general assemblies.

Every chief town of a concejo or corporation ought perhaps, by the constitution of Castile, to have received its regular writ for the election of deputies to Cortes. But there does not appear to have been, in the best times, any uniform practice in this respect. We find, in short, a good deal more irregularity than during the same period in England, where the number of electing boroughs varied pretty considerably at every Parliament. Yet the Cortes of Castile did not cease to be a numerous body and a fair representation of the people till the reign of John II. The first princes of the house of Trastamare had acted in all points with the advice of their Cortes. But John II., and still more his son Henry IV., being conscious of their own unpopularity, did not venture to meet a full assembly of the nation. Their writs were directed only to certain towns—an abuse for which the looseness of preceding usage had given a pretense. It must be owned that the people bore it in general very patiently. Many of the corporate towns, impoverished by civil warfare and other causes, were glad to save the cost of defraying their deputies' expenses. Thus, by the year 1480, only seventeen cities had retained privilege of representation. A vote was afterwards added for Granada, and three more in later times for Palencia, and the provinces of Estremadura and Galicia.[3] It might have been easy, perhaps, to redress this grievance while the exclusion was yet fresh and recent. But the privileged

[3] The cities which retained their representation in Cortes were Burgos, Toledo (there was a constant dispute for precedence between these two), Leon, Granada, Cordova, Murcia, Jaen, Zamora, Toro, Soria, Valladolid, Salamanca, Segovia, Avila, Madrid, Guadalaxara, and Cuenca. The representatives of these were supposed to vote not only for their immediate constituents, but for other adjacent towns. Thus Toro voted for Palencia and the kingdom of Galicia, before they obtained separate votes; Salamanca for most of Estremadura; Guadalaxara for Siguenza and four hundred other towns.

towns, with a mean and preposterous selfishness, although their zeal for liberty was at its height, could not endure the only means of effectually securing it, by a restoration of elective franchises to their fellow-citizens. The Cortes of 1506 assert, with one of those bold falsifications upon which a popular body sometimes ventures, that "it is established by some laws, and by immemorial usage, that eighteen cities of these kingdoms have the right of sending deputies to Cortes, and no more;" remonstrating against the attempts made by some other towns to obtain the same privilege, which they request may not be conceded. This remonstrance is repeated in 1512.

From the reign of Alfonso XI., who restrained the government of corporations to an oligarchy of magistrates, the right of electing members of Cortes was confined to the ruling body, the bailiffs or regidores, whose number seldom exceeded twenty-four, and whose succession was kept up by close election among themselves. The people therefore had no direct share in the choice of representatives. Experience proved, as several instances in these pages will show, that even upon this narrow basis the deputies of Castile were not deficient in zeal for their country and its liberties. But it must be confessed that a small body of electors is always liable to corrupt influence and to intimidation. John II. and Henry IV. often invaded the freedom of election; the latter even named some of the deputies. Several energetic remonstrances were made in Cortes against this flagrant grievance. Laws were enacted and other precautions devised to secure the due return of deputies. In the sixteenth century the evil, of course, was aggravated. Charles and Philip corrupted the members by bribery. Even in 1573 the Cortes are bold enough to complain that creatures of government were sent thither, "who were always held for suspected by the other deputies, and cause disagreement among them."

There seems to be a considerable obscurity about the constitution of the Cortes, so far as relates to the two higher estates, the spiritual and temporal nobility. It is admitted that down to the latter part of the thirteenth century, and especially before the introduction of representatives from the commons, they were summoned in considerable numbers. But from the reign of Sancho IV. they took much less share and retained much less influence in the deliberation of Cortes. In the fourteenth and fifteenth centuries they were more and more excluded.

It is manifest that the king exercised very freely a prerog

ative of calling or omitting persons of both the higher orders at his discretion. The bishops were numerous, and many of their sees not rich; while the same objections of inconvenience applied perhaps to the ricoshombres, but far more forcibly to the lower nobility, the hijosdalgo or caballeros. Castile never adopted the institution of deputies from this order, as in the States-General of France and some other countries, much less that liberal system of landed representation, which forms one of the most admirable peculiarities in our own constitution. It will be seen hereafter that spiritual and even temporal peers were summoned by our kings with much irregularity; and the disordered state of Castile through almost every reign was likely to prevent the establishment of any fixed usage in this and most other points.

§ 11. The primary and most essential characteristic of a limited monarchy is that money can only be levied upon the people through the consent of their representatives. This principle was thoroughly established in Castile; and the statutes which enforce it, the remonstrances which protest against its violation, bear a lively analogy to corresponding circumstances in the history of our constitution. The lands of the nobility and clergy were, I believe, always exempted from direct taxation—an immunity which perhaps rendered the attendance of the members of those estates in the Cortes less regular. The corporate districts or conjegos, which, as I have observed already, differed from the communities of France and England by possessing a large extent of territory subordinate to the principal town, were bound by their charter to a stipulated annual payment, the price of their franchises, called moneda forera. Beyond this sum nothing could be demanded without the consent of the Cortes. Demands of money do not seem to have been very usual before the prodigal reign of Alfonso X. That prince and his immediate successors were not much inclined to respect the rights of their subjects; but they encountered a steady and insuperable resistance. An explicit law was enacted by Alfonso XI. in 1328, who bound himself not to exact from his people, or cause them to pay any tax, either partial or general, not hitherto established by law, without the previous grant of all the deputies convened to the Cortes. This abolition of illegal impositions was several times confirmed by the same prince, and his successors. The Catholic kings, as they are eminently called, Ferdinand and Isabella, never violated this part of the constitution. In the Recopilacion, or code of Castilian law published by Philip II., we read a posi-

tive declaration against arbitrary imposition of taxes, which remained unaltered on the statute-book till the present age. The law was indeed frequently broken by Philip II.; but the Cortes, who retained throughout the 16th century a degree of steadiness and courage truly admirable when we consider their political weakness, did not cease to remonstrate with that suspicious tyrant, and recorded their unavailing appeal to the law of Alfonso XI., "so ancient and just, and which so long time has been used and observed."

The free assent of the people by their representatives to grants of money was by no means a mere matter of form. It was connected with other essential rights indispensable to its effectual exercise; those of examining public accounts and checking the expenditure. The Cortes, in the best times at least, were careful to grant no money until they were assured that what had been already levied on their constituents had been properly employed.

The contributions granted by Cortes were assessed and collected by respectable individuals (hombres buenos) of the several towns and villages. This *repartition*, as the French call it, of direct taxes is a matter of the highest importance in those countries where they are imposed by means of a gross assessment on a district. The produce was paid to the royal council. It could not be applied to any other purpose than that to which the tax had been appropriated. Thus the Cortes of Segovia, in 1407, granted a subsidy for the war against Granada, on condition "that it should not be laid out on any other service except this war;" which they requested the queen and Ferdinand, both regents in John II.'s minority, to confirm by oath. Part, however, of the money remaining unexpended, Ferdinand wished to apply it to his own object of procuring the crown of Aragon; but the queen first obtained not only a release from her oath by the pope, but the consent of the Cortes.

The Cortes did not consider it beyond the line of their duty, notwithstanding the respectful manner in which they always addressed the sovereign, to remonstrate against profuse expenditure even in his own household. They told Alfonso X. in 1258, in the homely style of that age, that they thought it fitting that the king and his wife should eat at the rate of a hundred and fifty maravedis a day, and no more; and that the king should order his attendants to eat more moderately than they did. Even in 1559 they spoke with an undaunted Castilian spirit to Philip II: "Sir, the expenses of your royal establishment and household are

much increased; and we conceive it would much redound to the good of these kingdoms that your majesty should direct them to be lowered, both as a relief to your wants, and that all the great men and other subjects of your majesty may take example therefrom to restrain the great disorder and excess they commit in that respect."

§ 12. The forms of a Castilian Cortes were analogous to those of an English Parliament in the fourteenth century. They were summoned by a writ almost exactly coincident in expression with that in use among us. The session was opened by a speech from the chancellor or other chief officer of the court. The deputies were invited to consider certain special business, and commonly to grant money. After the principal affairs were dispatched they conferred together, and, having examined the instructions of their respective constituents, drew up a schedule of petitions. These were duly answered one by one; and from the petition and answer, if favorable, laws were afterwards drawn up where the matter required a new law, or promises of redress were given if the petition related to an abuse or grievance. In the struggling condition of Spanish liberty under Charles I., the crown began to neglect answering the petitions of Cortes, or to use unsatisfactory generalities of expression. This gave rise to many remonstrances. The deputies insisted in 1523 on having answers before they granted money. They repeated the same contention in 1525, and obtained a general law inserted in the Recopilacion enacting that the king should answer all their petitions before he dissolved the assembly. This, however, was disregarded as before; but the Cortes whose intrepid honesty under Philip II. so often attracts our admiration continued as late as 1586 to appeal to the written statute and lament its violation.

§ 13. According to the ancient fundamental constitution of Castile, the king did not legislate for his subjects without their consent. This consent was originally given only by the higher estates, who might be considered, in a large sense, as representing the nation, though not chosen by it; but from the end of the twelfth century by the elected deputies of the commons in Cortes. The laws of the Siete Partidas, compiled by Alfonso X., did not obtain any direct sanction till the famous Cortes of Alcala, in 1348, when they were confirmed along with several others, forming altogether the basis of the statute-law of Spain. It appears, upon the whole, to have been a constitutional principle, that laws could neither be made nor annulled except in Cortes. In 1506 this is

claimed by the deputies as an established right. John I. had long before admitted that what was done by Cortes and general assemblies could not be undone by letters missive, but by such Cortes and assemblies alone. For the kings of Castile had adopted the English practice of dispensing with statutes by a non obstante clause in their grants. But the Cortes remonstrated more steadily against this abuse than our Parliament, who suffered it to remain in a certain degree till the Revolution. It was several times enacted upon their petition, especially by an explicit statute of Henry II., that grants and letters patent dispensing with statutes should not be obeyed. Nevertheless, John II., trusting to force or the servility of the judges, had the assurance to dispense explicitly with this very law. The Cortes of Valladolid, in 1442, obtained fresh promises and enactments against such an abuse. Philip I. and Charles I. began to legislate without asking the consent of Cortes; this grew much worse under Philip II., and reached its height under his successors, who entirely abolished all constitutional privileges. In 1555 we find a petition that laws made in Cortes should be revoked nowhere else. The reply was such as became that age: "To this we answer, that we shall do what best suits our government." But even in 1619, and still afterwards, the patriot representatives of Castile continued to lift an unavailing voice against illegal ordinances, though in the form of very humble petition; perhaps the latest testimonies to the expiring liberties of their country. The denial of exclusive legislative authority to the crown must, however, be understood to admit the legality of particular ordinances designed to strengthen the king's executive government. These, no doubt, like the royal proclamations in England, extended sometimes very far, and subjected the people to a sort of arbitrary coercion, much beyond what our enlightened notions of freedom would consider as reconcilable to it. But in the Middle Ages such temporary commands and prohibitions were not reckoned strictly legislative, and passed, perhaps rightly, for inevitable consequences of a scanty code and short session of the national council.

The kings were obliged to swear to the observance of laws enacted in Cortes, besides their general coronation oath to keep the laws and preserve the liberties of their people.

§ 14. It was customary to assemble the Cortes of Castile for many purposes besides those of granting money and concurring in legislation. They were summoned in every reign to acknowledge and confirm the succession of the heir-appar-

ent; and upon his accession to swear allegiance. These acts were, however, little more than formal, and accordingly have been preserved for the sake of parade after all the real dignity of the Cortes was annihilated. In the fourteenth and fifteenth centuries they claimed and exercised very ample powers. They assumed the right, when questions of regency occurred, to limit the prerogative, as well as to designate the persons who were to use it. And the frequent minorities of Castilian kings, which were unfavorable enough to tranquillity and subordination, served to confirm these parliamentary privileges. The Cortes were usually consulted upon all material business. A law of Alfonso XI. in 1328, printed in the Recopilacion or code published by Philip II., declares, "Since in the arduous affairs of our kingdom the counsel of our natural subjects is necessary, especially of the deputies from our cities and towns, therefore we ordain and command that on such great occasions the Cortes shall be assembled, and counsel shall be taken of the three estates of our kingdoms, as the kings our forefathers have been used to do.

§ 15. The kings of Leon and Castile acted, during the interval of the Cortes, by the advice of a smaller council, answering, as it seems, almost exactly to the king's ordinary council in England. In early ages, before the introduction of the commons, it is sometimes difficult to distinguish this body from the general council of the nation; being composed, in fact, of the same class of persons, though in smaller numbers. A similar difficulty applies to the English history. The nature of their proceedings seems best to ascertain the distinction. All executive acts, including those ordinances which may appear rather of a legislative nature, all grants and charters, are declared to be with the assent of the court (curia) or of the magnates of the palace, or of the chiefs or nobles. This privy council was an essential part of all European monarchies; and, though the sovereign might be considered as free to call in the advice of whomsoever he pleased, yet, in fact, the princes of the blood and most powerful nobility had anciently a constitutional right to be members of such a council, so that it formed a very material check upon his personal authority.

The council underwent several changes in progress of time which it is not necessary to enumerate. It was justly deemed an important member of the constitution, and the Cortes showed a laudable anxiety to procure its composition in such a manner as to form a guaranty for the due execution of

laws after their own dissolution. Several times, especially in minorities, they even named its members, or a part of them; and in the reigns of Henry III. and John II. they obtained the privilege of adding a permanent deputation, consisting of four persons elected out of their own body, annexed as it were to the council, who were to continue at the court during the interval of Cortes and watch over the due observance of the laws. This deputation continued as an empty formality in the sixteenth century. In the council the king was bound to sit personally three days in the week. Their business, which included the whole executive government, was distributed with considerable accuracy into what might be dispatched by the council alone, under their own seals and signatures, and what required the royal seal. The consent of this body was necessary for almost every act of the crown; for pensions or grants of money, ecclesiastical and political promotions, and for charters of pardon, the easy concession of which was a great encouragement to the homicides so usual in those ages, and was restrained by some of our own laws. But the council did not exercise any judicial authority, unlike in this to the ordinary council of the kings of England. It was not until the days of Ferdinand and Isabella that this, among other innovations, was introduced.

§ 16. Civil and criminal justice was administered, in the first instance, by the alcaldes, or municipal judges of towns; elected within themselves, originally, by the community at large, but, in subsequent times, by the governing body. In other places a lord possessed the right of jurisdiction by grant from the crown, not, what we find in countries where the feudal system was more thoroughly established, as incident to his own territorial superiority. The kings, however, began in the thirteenth century to appoint judges of their own, called corregidores, a name which seems to express concurrent jurisdiction with the regidores, or ordinary magistrates. The Cortes frequently remonstrated against this encroachment. Even where the king appointed magistrates at a city's request, he was bound to select them from among the citizens. From this immediate jurisdiction an appeal lay to the adelantado or governor of the province, and from thence to the tribunal of royal alcaldes. As a court of appeal, the royal alcaldes had the supreme jurisdiction. The king could only cause their sentence to be revised, but neither alter nor revoke it.

§ 17. Castile bore a closer analogy to England in its form of civil polity than France or even Aragon. But the frequent

disorders of its government and a barbarous state of manners rendered violations of law much more continual and flagrant than they were in England under the Plantagenet dynasty. And besides these practical mischiefs, there were two essential defects in the constitution of Castile, through which, perhaps, it was ultimately subverted. It wanted those two brilliants in the coronet of British liberty, the representation of freeholders among the commons, and trial by jury. The Cortes of Castile became a congress of deputies from a few cities, public-spirited indeed and intrepid, as we find them in bad times, to an eminent degree, but too much limited in number, and too unconnected with the territorial aristocracy, to maintain a just balance against the crown. Yet, with every disadvantage, that country possessed a liberal form of government, and was animated with a noble spirit for its defense.

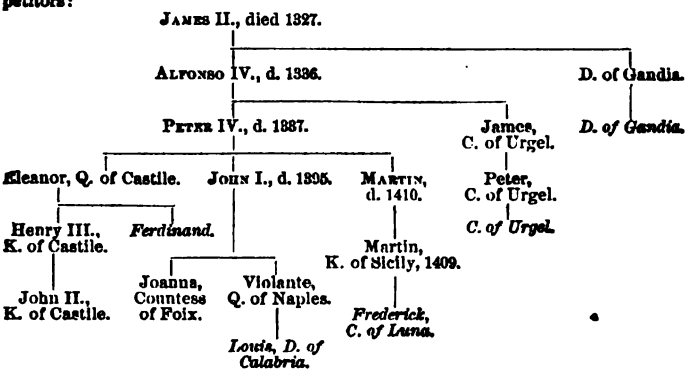
§ 18. Though the kingdom of Aragon was very inferior in extent to that of Castile, yet the advantages of a better form of government and wiser sovereigns, with those of industry and commerce along a line of sea-coast, rendered it almost equal in importance. Castile rarely intermeddled in the civil dissensions of Aragon; the kings of Aragon frequently carried their arms into the heart of Castile. During the sanguinary outrages of Peter the Cruel, and the stormy revolutions which ended in establishing the house of Trastamare, Aragon was not indeed at peace, nor altogether well governed; but her political consequence rose in the eyes of Europe through the long reign of the ambitious and wily Peter IV., whose sagacity and good-fortune redeemed, according to the common notions of mankind, the iniquity with which he stripped his relation, the King of Majorca, of the Belearic Islands, and the constant perfidiousness of his character. I have mentioned in another place the Sicilian war, prosecuted with so much eagerness for many years by Peter III. and his son Alfonso III.[4] After this object was relinquished, James II. undertook an enterprise less splendid, but not much less difficult, the conquest of Sardinia. That island, long accustomed to independence, cost an incredible expense of blood and treasure to the kings of Aragon during the whole fourteenth century. It was not fully subdued till the commencement of the next, under the reign of Martin.

At the death of Martin, king of Aragon, in 1410, a memorable question arose as to the right of succession. Though Petronilla, daughter of Ramiro II., had reigned in her own

[4] See p. 222.

right from 1137 to 1172, an opinion seems to have gained ground from the thirteenth century that females could not inherit the crown of Aragon. Peter IV. had excited a civil war by attempting to settle the succession upon his daughter, to the exclusion of his next brother. The birth of a son about the same time suspended the ultimate decision of this question; but it was tacitly understood that what is called the Salic law ought to prevail. Accordingly, on the death of John I. in 1395, his two daughters were set aside in favor of his brother Martin, though not without opposition on the part of the elder, whose husband, the Count of Foix, invaded the kingdom, and desisted from his pretension only through want of force. Martin's son, the King of Sicily, dying in his father's lifetime, the nation was anxious that the king should fix upon his successor, and would probably have acquiesced in his choice. But his dissolution occurring more rapidly than was expected, the throne remained absolutely vacant. The Count of Urgel had obtained a grant of the lieutenancy, which was the right of the heir-apparent. This nobleman possessed an extensive territory in Catalonia, bordering on the Pyrenees. He was grandson of James, next brother to Peter IV., and, according to our rules of inheritance, certainly stood in the first place. The other claimants were the Duke of Gandia, grandson of James II.,[6] who, though descended from a more distant ancestor, set up a claim founded on proximity to the royal stock, which in some countries was preferred to a representative title; the Duke of Calabria, son of Violante, younger daughter of John I. (the Countess of Foix being childless); Frederick, count of Luna, a natural

[6] The subjoined pedigree will show more clearly the respective titles of the competitors:



son of the younger Martin, king of Sicily, legitimated by the pope, but with a reservation excluding him from royal succession; and finally, Ferdinand, infant of Castile, son of the late king's sister. The Count of Urgel was favored in general by the Catalans, and he seemed to have a powerful support in Antonio de Luna, a baron of Aragon, so rich that he might go through his own estate from France to Castile. But this apparent superiority frustrated his hopes. The justiciary and other leading Aragonese were determined not to suffer this great constitutional question to be decided by an appeal to force, which might sweep away their liberties in the struggle. Urgel, confident of his right, and surrounded by men of ruined fortunes, was unwilling to submit his pretensions to a civil tribunal. His adherent, Antonio de Luna, committed an extraordinary outrage, the assassination of the Archbishop of Saragossa, which alienated the minds of good citizens from his cause. On the other hand, neither the Duke of Gandia, who was very old, nor the Count of Luna seemed fit to succeed. The party of Ferdinand, therefore, gained ground by degrees. It was determined, however, to render a legal sentence. The Cortes of each nation agreed upon the nomination of nine persons, three Aragonese, three Catalans, and three Valencians, who were to discuss the pretensions of the several competitors, and by a plurality of six votes to adjudge the crown. Nothing could be more solemn, more peaceful, nor, in appearance, more equitable than the proceedings of this tribunal. They summoned the claimants before them, and heard them by counsel. A month was passed in hearing arguments; a second was allotted to considering them; and at the expiration of the prescribed time it was announced to the people, by the mouth of St. Vincent Ferrier, that Ferdinand of Castile had ascended the throne (A.D. 1412).

In this decision it is impossible not to suspect that the judges were swayed rather by politic considerations than a strict sense of hereditary right. It was, therefore, by no means universally popular, especially in Catalonia, of which principality the Count of Urgel was a native; and perhaps the great rebellion of the Catalans fifty years afterwards may be traced to the disaffection which this breach, as they thought, of the lawful succession had excited. Ferdinand, however, was well received in Aragon. Ferdinand's successor was his son, Alfonso V. (A.D. 1416), more distinguished in the history of Italy than of Spain. For all the latter years of his life he never quitted the kingdom that he had acquired

by his arms; and, enchanted by the delicious air of Naples, intrusted the government of his patrimonial territories to the care of a brother and an heir, John II., upon whom they devolved by the death of Alfonso without legitimate progeny.

§ 19. It is consonant with the principle of this work to pass over the common details of history, in order to fix the reader's attention more fully on subjects of philosophical inquiry. Perhaps in no European monarchy except our own was the form of government more interesting than in Aragon, as a fortunate temperament of law and justice with the royal authority. So far as any thing can be pronounced of its earlier period before the capture of Saragossa in 1118, it was a kind of regal aristocracy, where a small number of powerful barons elected their sovereign on every vacancy, though, as usual in other countries, out of one family; and considered him as little more than the chief of their confederacy. These were the *ricoshombres*, or barons, the first order of the state. Among these the kings of Aragon, in subsequent times, as they extended their dominions, shared the conquered territory in grants of honors on a feudal tenure. For this system was fully established in the kingdom of Aragon. A ricohombre was obliged to hold of the king an honor or barony capable of supporting more than three knights; and this he was bound to distribute among his vassals in military fiefs. Once in the year he might be summoned with his feudatories to serve the sovereign for two or three months; and he was to attend the royal court, or general assembly, as a counsellor, whenever called upon, assisting in its judicial as well as deliberative business. In the towns and villages of his barony he might appoint bailiffs to administer justice and receive penalties; but the higher criminal jurisdiction seems to have been reserved to the crown.

Below these superior nobles were the *mesnadaries*, corresponding to our mere tenants in chief, holding estates not baronial immediately from the crown; and the military vassals of the high nobility, the knights and *infanzones:* a word which may be rendered by gentlemen. These had considerable privileges in that aristocratic government; they were exempted from all taxes, they could only be tried by the royal judges for any crime; and offenses committed against them were punished with additional severity. The ignoble classes were, as in other countries, the burgesses of towns, and the villeins or peasantry. The peasantry seem to have been subject to territorial servitude, as in France and England.

§ 20. Though from the twelfth century the principle of hereditary succession to the throne superseded, in Aragon as well as Castile, the original right of choosing a sovereign within the royal family, it was still founded upon one more sacred and fundamental, that of compact. No king of Aragon was entitled to assume that name until he had taken a coronation oath, administered by the justiciary at Saragossa, to observe the laws and liberties of the realm.

Blancas quotes a noble passage from the acts of Cortes in 1451. "We have always heard of old time, and it is found by experience, that, seeing the great barrenness of this land, and the poverty of the realm, if it were not for the liberties thereof, the folk would go hence to live and abide in other realms and lands more fruitful." This high spirit of freedom had long animated the Aragonese. After several contests with the crown, they compelled Peter III., in 1283, to grant a law, called the General Privilege, the Magna Charta of Aragon, and perhaps a more full and satisfactory basis of civil liberty than our own. It contains a series of provisions against arbitrary tallages, spoliations of property, secret process after the manner of the Inquisition in criminal charges, sentences of the justiciary without assent of the Cortes, appointment of foreigners or Jews to judicial offices; trials of accused persons in places beyond the kingdom, the use of torture, except in charges of falsifying the coin, and the bribery of judges. These are claimed as the ancient liberties of their country. "Absolute power, it is declared, never was the constitution of Aragon, nor of Valencia, nor yet of Ribagorça, nor shall there be in time to come any innovation made; but only the law, custom, and privilege which has been anciently used in the aforesaid kingdoms."

The concessions extorted by our ancestors from John, Henry III., and Edward I. were secured by the only guaranty those times could afford, the determination of the barons to enforce them by armed confederacies. These, however, were formed according to emergencies, and, except in the famous commission of twenty-five conservators of Magna Charta, in the last year of John, were certainly unwarranted by law. But the Aragonese established a positive right of maintaining their liberties by arms. This was contained in the Privilege of Union granted by Alfonso III. in 1287, after a violent conflict with his subjects; but which was afterwards so completely abolished, and even eradicated from the records of the kingdom, that its precise words have never been recovered. It appears to have consisted of two articles: first,

that, in the case of the king's proceeding forcibly against any member of the union without previous sentence of the justiciary, the rest should be absolved from their allegiance; secondly, that he should hold Cortes every year in Saragossa. During the two subsequent reigns of James II. and Alfonso IV., little pretense seems to have been given for the exercise of this right. But dissensions breaking out under Peter V. in 1347, rather on account of his attempt to settle the crown upon his daughter than of any specific public grievances, the nobles had recourse to the Union. They assembled at Saragossa, and used a remarkable seal for all their public instruments—an engraving from which may be seen in the historian Blancas. It represents the king sitting on his throne, with the confederates kneeling in a suppliant attitude around, to denote their unwillingness to offend. But in the background tents and lines of spears are discovered, as a hint of their ability and resolution to defend themselves. The legend is "Sigillum Unionis Aragonum." This respectful demeanor towards a sovereign against whom they were waging war reminds us of the language held out by our Long Parliament before the Presbyterian party was overthrown. These confederates were defeated by the king at Epila in 1348. But his prudence and the remaining strength of his opponents inducing him to pursue a moderate course, there ensued more legitimate and permanent balance of the constitution from this victory of the Royalists. The privilege of Union was abrogated, Peter himself cutting to pieces with his sword the original instrument. But in return many excellent laws for the security of the subject were enacted; and their preservation was intrusted to the greatest officer of the kingdom, the justiciary, whose authority and pre-eminence may in a great degree be dated from this period. That watchfulness over public liberty, which originally belonged to the aristocracy of ricoshombres, always apt to thwart the crown or to oppress the people, and which was afterwards maintained by the dangerous Privilege of Union, became the duty of a civil magistrate accustomed to legal rules and responsible for his actions, whose office and functions are the most pleasing feature in the constitutional history of Aragon.

§ 21. The functions of the *Justiza* or *Justiciary* of Aragon did not differ, in any essential respect, from those of the Chief-justice of England, divided, from the time of Edward I., among the judges of the King's Bench. But in the practical exercise, indeed, of this power, there was an abundant

difference. Our English judges, more timid and pliant, left to the remonstrances of Parliament that redress of grievances which very frequently lay within the sphere of their jurisdiction. There is, I believe, no recorded instance of a habeas corpus granted in any case of illegal imprisonment by the crown or its officers during the continuance of the Plantagenet dynasty. We shall speedily take notice of a very different conduct in Aragon.

The office of justiciary, whatever conjectural antiquity some have assigned to it, is not to be traced beyond the capture of Saragossa in 1118, when the series of magistrates commences. But for a great length of time they do not appear to have been particularly important; the judicial authority residing in the council of ricoshombres, whose suffrages the justiciary collected, in order to pronounce their sentence rather than his own. Gradually, as notions of liberty became more definite, and laws more numerous, the reverence paid to their permanent interpreter grew stronger, and there was fortunately a succession of prudent and just men in that high office, through whom it acquired dignity and stable influence. Still, it was not perhaps looked upon as fully equal to maintain public liberty against the crown, till in the Cortes of 1348, after the Privilege of Union was forever abolished, such laws were enacted, and such authority given to the justiciary, as proved eventually a more adequate barrier against oppression than any other country could boast. All the royal as well as territorial judges were bound to apply for his opinion in case of legal difficulties arising in their courts, which he was to certify within eight days. By subsequent statutes of the same reign, it was made penal for any one to obtain letters from the king impeding the execution of the justiza's process, and they were declared null. Inferior courts were forbidden to proceed in any business after his prohibition. Many other laws might be cited corroborating the authority of this great magistrate; but there are two parts of his remedial jurisdiction which deserve special notice.

These are the processes of *Jurisfirma*, or firma del derecho, and of *Manifestation*. The former bears some analogy to the writs of *pone* and *certiorari* in England, through which the Court of King's Bench exercises its right of withdrawing a suit from the jurisdiction of inferior tribunals. But the Aragonese *jurisfirma* was of more extensive operation. Its object was not only to bring a cause commenced in an inferior court before the justiciary, but to prevent or inhibit

any process from issuing against the person who applied for its benefit, or any molestation from being offered to him; so that, as Blancas expresses it, when we have entered into a recognizance before the justiciary of Aragon to abide the decision of law, our fortunes shall be protected, by the interposition of his prohibition, from the intolerable iniquity of the royal judges. The process termed *manifestation* afforded as ample security for personal liberty as that of juris firma did for property. "To *manifest* any one is to wrest him from the hands of the royal officers, that he may not suffer any illegal violence; not that he is at liberty by this process, because the merits of his case are still to be inquired into; but because he is now detained publicly, instead of being, as it were, concealed, and the charge against him is investigated, not suddenly or with passion, but in calmness and according to law, therefore this is called manifestation." The power of this writ (if I may apply our term) was such, that it would rescue a man whose neck was in the halter. A particular prison was allotted to those detained for trial under this process.

Several proofs that such admirable provisions did not remain a dead letter in the law of Aragon appear in the two historians, Blancas and Zurita, whose noble attachment to liberties, of which they had either witnessed or might foretell the extinction, continually displays itself. I can not help illustrating this subject by two remarkable instances. The heir-apparent of the kingdom of Aragon had a constitutional right to the lieutenancy or regency during the sovereign's absence from the realm. The title and office, indeed, were permanent, though the functions must of course have been superseded during the personal exercise of royal authority. But as neither Catalonia nor Valencia, which often demanded the king's presence, were considered as parts of the kingdom, there were pretty frequent occasions for this anticipated reign of the eldest prince. Such a regulation was not likely to diminish the mutual and almost inevitable jealousies between kings and their heirs-apparent, which have so often disturbed the tranquillity of a court and a nation. Peter IV. removed his eldest son, afterwards John I., from the lieutenancy of the kingdom. The prince entered into a firma del derecho before the justiciary, Dominic de Cerda, who, pronouncing in his favor, enjoined the king to replace his son in the lieutenancy as the undoubted right of the eldest born. Peter obeyed, not only in fact, to which, as Blancas observes, the law compelled him, but with apparent cheerfulness.

There are, indeed, no private persons who have so strong an interest in maintaining a free constitution and the civil liberties of their countrymen as the members of royal families, since none are so much exposed, in absolute governments, to the resentment and suspicion of a reigning monarch.

John I., who had experienced the protection of law in his weakness, had afterwards occasion to find it interposed against his power. This king had sent some citizens of Saragossa to prison without form of law. They applied to Juan de Cerda, the justiciary, for a manifestation. He issued his writ accordingly; nor, says Blancas, could he do otherwise without being subject to a heavy fine. The king, pretending that the justiciary was partial, named one of his own judges, the vice-chancellor, as coadjutor. This raised a constitutional question, whether, on suspicion of partiality, a coadjutor to the justiciary could be appointed. The king sent a private order to the justiciary not to proceed to sentence upon this interlocutory point until he should receive instructions in the council, to which he was directed to repair. But he instantly pronounced sentence in favor of his exclusive jurisdiction without a coadjutor. He then repaired to the palace. Here the vice-chancellor, in a long harangue, enjoined him to suspend sentence till he had heard the decision of the council. Juan de Cerda answered that, the case being clear, he had already pronounced upon it. This produced some expressions of anger from the king, who began to enter into an argument on the merits of the question. But the justiciary answered that, with all deference to his majesty, he was bound to defend his conduct before the Cortes, and not elsewhere. On a subsequent day the king, having drawn the justiciary to his country palace on pretense of hunting, renewed the conversation with the assistance of his ally, the vice-chancellor; but no impression was made on the venerable magistrate, whom John at length, though much pressed by his advisers to violent courses, dismissed with civility. The king was probably misled throughout this transaction, which I have thought fit to draw from obscurity, not only in order to illustrate the privilege of manifestation, but as exhibiting an instance of judicial firmness and integrity, to which, in the fourteenth century, no country perhaps in Europe could offer a parallel.

Before the Cortes of 1348 it seems as if the justiciary might have been displaced at the king's pleasure. From that time he held his station for life. But lest these high powers, imparted for the prevention of abuses, should themselves be

abused, the justiciary was responsible, in case of an unjust sentence, to the extent of the injury inflicted; and was also subjected, by a statute of 1390, to a court of inquiry, composed of four persons chosen by the king out of eight named by the Cortes; whose office appears to have been that of examining and reporting to the four estates in Cortes, by whom he was ultimately to be acquitted or condemned. This superintendence of the Cortes, however, being thought dilatory and inconvenient, a court of seventeen persons was appointed in 1461 to hear complaints against the justiciary. Some alterations were afterwards made in this tribunal.* The justiciary was always a knight, chosen from the second order of nobility, the barons not being liable to personal punishment. He administered the coronation oath to the king; and in the Cortes of Aragon the justiciary acted as a sort of royal commissioner, opening or proroguing the assembly by the king's direction.

§ 22. No laws could be enacted or repealed, nor any tax imposed, without the consent of the estates duly assembled. It may easily be supposed that the Aragonese were not behind other nations in statutes to secure these privileges, which upon the whole appear to have been more respected than in any other monarchy. The General Privilege of 1283 formed a sort of groundwork for this legislation, like the Great Charter in England. By a clause in this law, Cortes were to be held every year at Saragossa. But under James II. their time of meeting was reduced to once in two years, and the place was left to the king's discretion. Nor were the Cortes of Aragon less vigilant than those of Castile in claiming a right to be consulted in all important deliberations of the executive power, or in remonstrating against abuses of government, or in superintending the proper expenditure of public money.

Four estates, or, as they were called, arms (*brazos*), formed the Cortes of Aragon—the prelates and commanders of military orders, who passed for ecclesiastics; and barons, or *ricoshombres;* the equestrian order, or *infanzones*, and the deputies of royal towns. The two former had a right of appearing by proxy. There was no representation of the infanzones, or lower nobility. But it must be remembered

* These regulations were very acceptable to the nation. In fact, the Justiza of Aragon had possessed much more unlimited powers than ought to be intrusted to any single magistrate. The Court of King's Bench in England, besides its consisting of five co-ordinate judges, is checked by the appellant jurisdictions of the Exchequer Chamber and House of Lords, and still more importantly by the rights of juries.

that they were not numerous, nor was the kingdom large. Thirty-five are reckoned by Zurita as present in the Cortes of 1395, and thirty-three in those of 1412; and as upon both occasions an oath of fealty to a new monarch was to be taken, I presume that nearly all the nobility of the kingdom were present. The ricoshombres do not seem to have exceeded twelve or fourteen in number. The ecclesiastical estate was not much, if at all, more numerous. A few principal towns alone sent deputies to the Cortes; but their representation was very full; eight or ten, and sometimes more, sat for Saragossa, and no town appears to have had less than four representatives. During the interval of the Cortes a permanent commission, varying a good deal as to numbers, but chosen out of the four estates, was empowered to sit with very considerable authority, receiving and managing the public revenue, and protecting the justiciary in his functions.

§ 23. The kingdom of Valencia, and principality of Catalonia, having been annexed to Aragon, the one by conquest, the other by marriage, were always kept distinct from it in their laws and government. Each had its Cortes, composed of three estates, for the division of the nobility into two orders did not exist in either country. The Catalans were tenacious of their ancient usages, and averse to incorporation with any other people of Spain. Their national character was high-spirited and independent; in no part of the peninsula did the territorial aristocracy retain, or at least pretend to, such extensive privileges, and the citizens were justly proud of wealth acquired by industry, and of renown achieved by valor. At the accession of Ferdinand I., which they had not much desired, the Catalans obliged him to swear three times successively to maintain their liberties before they would take the reciprocal oath of allegiance. For Valencia it seems to have been a politic design of James the Conqueror to establish a constitution nearly analogous to that of Aragon, but with such limitations as he should impose, taking care that the nobles of the two kingdoms should not acquire strength by union. These three states, Aragon, Valencia, and Catalonia, were perpetually united by a law of Alfonso III.; and every king, on his accession, was bound to swear that he would never separate them. Sometimes general Cortes of the kingdoms and principality were convened; but the members did not, even in this case, sit together, and were no otherwise united than as they met in the same city.

§ 24. By the marriage of Ferdinand with Isabella, and by the death of John II. in 1479, the two ancient and rival king-

doms of Castile and Aragon were forever consolidated in the monarchy of Spain. There had been some difficulty in adjusting the respective rights of the husband and wife over Castile. In the Middle Ages it was customary for the more powerful sex to exercise all the rights which it derived from the weaker, as much in sovereignties as in private possessions. But the Castilians were determined to maintain the positive and distinct prerogatives of their queen, to which they attached the independence of their nation. A compromise, therefore, was concluded, by which, though, according to our notions, Ferdinand obtained more than a due share, he might consider himself as more strictly limited than his father had been in Navarre. The names of both were to appear jointly in their style and upon the coin, the king's taking the precedence in respect of his sex. But in the royal scutcheon the arms of Castile were preferred on account of the kingdom's dignity. Isabella had the appointment to all civil offices in Castile; the nomination to spiritual benefices ran in the name of both. The government was to be conducted by the two conjointly when they were together, or by either singly in the province where one or other might happen to reside. This partition was well preserved throughout the life of Isabel without mutual encroachments or jealousies. So rare an unanimity between persons thus circumstanced must be attributed to the superior qualities of that princess, who, while she maintained a constant good understanding with a very ambitious husband, never relaxed in the exercise of her paternal authority over the kingdoms of her ancestors.

§ 25. Ferdinand and Isabella had no sooner quenched the flames of civil discord in Castile than they determined to give an unequivocal proof to Europe of the vigor which the Spanish monarchy was to display under their government. For many years an armistice with the Moors of Granada had been uninterrupted. Neither John II. nor Henry IV. had been at leisure to think of aggressive hostilities; and the Moors themselves—a prey, like their Christian enemies, to civil war and the feuds of their royal family—were content with the unmolested enjoyment of the finest province in the peninsula. If we may trust historians, the sovereigns of Granada were generally usurpers and tyrants. But I know not how to account for that vast populousness, that grandeur and magnificence, which distinguished the Mohammedan kingdom of Spain, without ascribing some measure of wisdom and beneficence to their governments. These southern provinces have dwindled in later times; and in fact Spain itself is chiefly interesting to many travellers for the monu-

ments which a foreign and odious race of conquerors have left behind them. Granada was, however, disturbed by a series of revolutions about the time of Ferdinand's accession, which naturally encouraged his designs. The Moors, contrary to what might have been expected from their relative strength, were the aggressors by attacking a town in Andalusia. Predatory inroads of this nature had hitherto been only retaliated by the Christians. But Ferdinand was conscious that his resources extended to the conquest of Granada, the consummation of a struggle protracted through nearly eight centuries. Even in the last stage of the Moorish dominion, exposed on every side to invasion, enfeebled by a civil dissension that led one party to abet the common enemy, Granada was not subdued without ten years of sanguinary and unremitting contest. Fertile beyond all the rest of Spain, that kingdom contained seventy walled towns; and the capital is said, almost two centuries before, to have been peopled by 200,000 inhabitants. Its resistance to such a force as that of Ferdinand is perhaps the best justification of the apparent negligence of earlier monarchs. But Granada was ultimately to undergo the yoke. The city surrendered on the 2d of January, 1492—an event glorious not only to Spain but to Christendom—and which, in the political combat of the two religions, seemed almost to counterbalance the loss of Constantinople. It raised the name of Ferdinand and of the new monarchy which he governed to high estimation throughout Europe. Spain appeared an equal competitor with France in the lists of ambition. These great kingdoms had for some time felt the jealousy natural to emulous neighbors. The house of Aragon loudly complained of the treacherous policy of Louis XI. He had fomented the troubles of Castile, and given, not indeed an effectual aid, but all promises of support, to the Princess Joanna, the competitor of Isabel. Rousillon, a province belonging to Aragon, had been pledged to France by John II. for a sum of money. It would be tedious to relate the subsequent events, or to discuss their respective claims to its possession. At the accession of Ferdinand, Louis XI. still held Roussillon, and showed little intention to resign it. But Charles VIII., eager to smooth every impediment to his Italian expedition, restored the province to Ferdinand in 1493. Whether, by such a sacrifice, he was able to lull the King of Aragon into acquiescence, while he dethroned his relation at Naples, and alarmed for a moment all Italy with the apprehension of French dominion, it is not within the limits of the present work to inquire.

CHAPTER V.

HISTORY OF GERMANY TO THE DIET OF WORMS IN 1495.

§ 1. Sketch of German History. § 2. The Emperors of the House of Saxony. § 3. House of Franconia. § 4. Lothaire II., the Saxon. § 5. House of Suabia. Frederick Barbarossa. Fall of Henry the Lion. Frederick II. Extinction of House of Suabia. § 6. Changes in the Germanic Constitution. Electors. Territorial Sovereignty of the Princes. § 7. Rodolph of Hapsburg. § 8. State of the Empire after his Time. Causes of Decline of Imperial Power. § 9. House of Luxemburg. Charles IV. § 10. House of Austria. Frederick III. § 11. Imperial Cities. § 12. Provincial States. § 13. Imperial Domain. § 14. Maximilian. Diet of Worms. Abolition of private Wars. § 15. Imperial Chamber. § 16. Aulic Council. § 17. Limits of the Empire. § 18. Bohemia. § 19. Hungary. § 20. Switzerland.

LIST OF EMPERORS DURING THE MIDDLE AGES.

Year of Accession. A.D.		Year of Accession. A.D.	
800	Charles I. (the Great). Charlemagne.	1198	Philip, Otho IV. (rivals).
814	Louis I. (the Pious).	1208	Otho IV.
840	Lothaire I.	1212	Frederick II.
855	Louis II.	1250	Conrad IV., William (rivals).
875	Charles II. (the Bald).	1254	Interregnum.
881	Charles III. (the Fat).	1257	Richard (Earl of Cornwall), Alfonso (king of Castile) rivals).
896	Arnulf.	1272	Rodolph I. (of Hapsburg)
899	Louis (the Child).	1292	Adolphus (of Nassau).
901	Louis III. (of Provence).	1298	Albert I.
911 (?)	Conrad I.	1308	Henry VII. (of Luxemburg).
915	Berengar.	1314	Louis IV. (of Bavaria). (Frederick of Austria, rival).
918	Henry I. (the Fowler).	1347	Charles IV. (Günther of Schwartzburg, rival).
936	Otho I. (the Great).	1378	Wenceslaus
973	Otho II.	1400	Rupert.
983	Otho III.	1410	Sigismund. (Jobst of Moravia, rival).
1002	Henry II. (the Saint).	1438	Albert II.
1024	Conrad II. (the Salic).	1440	Frederick III.
1039	Henry III.	1493	Maximilian I.
1056	Henry IV.	1519	Charles V.
1106	Henry V.		
1125	Lothaire II. (the Saxon).		
1138	Conrad III.		
1152	Frederick I. (Barbarossa).		
1190	Henry VI.		

§ 1. AFTER the deposition of Charles the Fat, which finally severed the connection between France and Germany, Arnulf, an illegitimate descendant of Charlemagne, obtained the throne of the latter country, in which he was succeeded

by his son Louis. But upon the death of this prince in 911, the German branch of that dynasty became extinct. There remained, indeed, Charles the Simple, acknowledged as king in some parts of France, but rejected in others, and possessing no personal claims to respect. The Germans, therefore, wisely determined to choose a sovereign from among themselves. They were at this time divided into five nations, each under its own duke, and distinguished by difference of laws, as well as of origin; (1) the *Franks*, whose territory, comprising Franconia and the modern Palatinate, was considered as the cradle of the empire, and who seemed to have arrogated some superiority over the rest, (2) the *Suabians*, (3) the *Bavarians*, (4) the *Saxons*, under which name the inhabitants of Lower Saxony alone and Westphalia were included, and (5) the *Lorrainers*, who occupied the left bank of the Rhine as far as its termination. The choice of these nations in their general assembly fell upon Conrad, duke of Franconia, according to some writers, or at least a man of high rank, and descended through females from Charlemagne (A.D. 911).

§ 2. HOUSE OF SAXONY.—Conrad dying without male issue, the crown of Germany was bestowed upon Henry the Fowler, duke of Saxony, ancestor of the three Othos, who followed him in direct succession. To Henry, and to the first Otho, Germany was more indebted than to any sovereign since Charlemagne. The conquest of Italy, and recovery of the imperial title, are indeed the most brilliant trophies of Otho the Great; but he conferred far more unequivocal benefits upon his own country by completing what his father had begun, her liberation from the inroads of the Hungarians. Two marches, that of Misnia, erected by Henry the Fowler, and that of Austria, by Otho, were added to the Germanic territories by their victories.

A lineal succession of four descents without the least opposition seems to show that the Germans were disposed to consider their monarchy as fixed in the Saxon family. Otho II. and III. had been chosen each in his father's lifetime, and during legal infancy. The formality of election subsisted at that time in every European kingdom, and the imperfect rights of birth required a ratification by public assent. If at least France and England were hereditary monarchies in the tenth century, the same may surely be said of Germany; since we find the lineal succession fully as well observed in the last as in the former. But upon the early and unexpected decease of Otho III., a momentary opposition was of-

fered to Henry, duke of Bavaria, a collateral branch of the reigning family (A.D. 1002). He obtained the crown, however, by what contemporary historians call an hereditary title, and it was not until his death, in 1024, that the house of Saxony was deemed to be extinguished.

§ 3. HOUSE OF FRANCONIA.—No person had now any pretentions that could interfere with the unbiased suffrages of the nation; and accordingly a general assembly was determined by merit to elect Conrad, surnamed the Salic, a nobleman of Franconia (A.D. 1024). From this prince sprang three successive emperors, Henry III., IV., and V. Perhaps the imperial prerogatives over that insubordinate confederacy never reached so high a point as in the reign of Henry III., the second emperor of the house of Franconia. It had been, as was natural, the object of all his predecessors, not only to render their throne hereditary, which, in effect, the nation was willing to concede, but to surround it with authority sufficient to control the leading vassals. These were the dukes of the four nations of Germany, Saxony, Bavaria, Suabia, and Franconia, and the three archbishops of the Rhenish cities, Mentz, Treves, and Cologne. Originally, as has been more fully shown in another place, duchies, like counties, were temporary governments bestowed at the pleasure of the crown. From this first stage they advanced to hereditary offices, and finally to patrimonial fiefs. But their progress was much slower in Germany than in France. Under the Saxon line of emperors, it appears probable that, although it was usual, and consonant to the prevailing notions of equity, to confer a duchy upon the nearest heir, yet no positive rule enforced this upon the emperor, and some instances of a contrary proceeding occurred. Henry III. put an end altogether to the form of popular concurrence, which had been usual when the investiture of a duchy was conferred; and even deposed dukes by the sentence of a few princes, without the consent of the Diet. If we combine with these proofs of authority in the domestic administration of Henry III. his almost unlimited control over papal elections, or rather the right of nomination that he acquired, we must consider him as the most absolute monarch in the annals of Germany.

These ambitious measures of Henry III. prepared fifty years of calamity for his son. It is easy to perceive that the misfortunes of Henry IV. were primarily occasioned by the jealousy with which repeated violations of their constitutional usages had inspired the nobility. The mere circum-

stance of Henry IV.'s minority, under the guardianship of a woman, was enough to dissipate whatever power his father had acquired. Through the neglect of his education, Henry grew up with a character not well fitted to retrieve the mischief of so unprotected a minority; brave indeed, well-natured, and affable, but dissolute beyond measure, and addicted to low and debauched company. He was soon involved in a desperate war with the Saxons, a nation valuing itself on its populousness and riches, jealous of the house of Franconia, who wore a crown that had belonged to their own dukes, and indignant at Henry's conduct in erecting fortresses throughout their country.

In the middle of this contest another far more memorable broke out with the Roman See, concerning eclesiastical investitures (A.D. 1077). The motives of this famous quarrel will be explained in a different chapter of the present work. Its effect in Germany was ruinous to Henry. A sentence, not only of excommunication, but of deposition, which Gregory VII. pronounced against him, gave a pretense to all his enemies, secret as well as avowed, to withdraw their allegiance. At the head of these was Rodolph, duke of Suabia, whom an assembly of revolted princes raised to the throne. We may perceive, in the conditions of Rodolph's election, a symptom of the real principle that animated the German aristocracy against Henry IV. It was agreed that the kingdom should no longer be hereditary, not conferred on the son of a reigning monarch, unless his merit should challenge the popular approbation. The pope strongly encouraged this plan of rendering the empire elective, by which he hoped either eventually to secure the nomination of its chief for the Holy See, or at least, by sowing the seed of civil dissensions in Germany, to render Italy more independent. Henry IV., however, displayed greater abilities in his adversity than his early conduct had promised. In the last of several decisive battles, Rodolph, though victorious, was mortally wounded; and no one cared to take up a gauntlet which was to be won with so much trouble and uncertainty (A.D. 1080). The Germans were sufficiently disposed to submit; but Rome persevered in her unrelenting hatred. At the close of Henry's long reign she excited against him his eldest son, and, after more than thirty years of hostility, had the satisfaction of wearing him down with misfortune, and casting out his body, as excommunicated, from its sepulchre.

§ 4. In the reign of his son Henry V. there is no event worthy of much attention, except the termination of the

great contest about investitures. At his death, in 1125, the male line of the Franconian emperors was at an end. Frederick, duke of Suabia, grandson by his mother of Henry IV., had inherited their patrimonial estates, and seemed to represent their dynasty. But both the last emperors had so many enemies, and a disposition to render the crown elective prevailed so strongly among the leading princes, that Lothaire, duke of Saxony, was elevated to the throne. Lothaire, who had been engaged in a revolt against Henry V., and the chief of a nation that bore an inveterate hatred to the house of Franconia, was the natural enemy of the new family that derived its importance and pretensions from that stock. It was the object of his reign, accordingly, to oppress the two brothers, Frederick and Conrad, of the Hohenstaufen or Suabian family. But this means he expected to secure the succession of the empire for his son-in-law, Henry, surnamed the Proud, who was descended from a distinguished family, the Welfs of Altorf, in Suabia. From this family he inherited the duchy of Bavaria. The wife of Lothaire transmitted to her daughter the patrimony of Henry the Fowler, consisting of Hanover and Brunswick. Besides this great dowry, Lothaire bestowed upon his son-in-law the duchy of Saxony in addition to that of Bavaria.

§ 5. HOUSE OF SUABIA, OR HOHENSTAUFEN.[1]—This amazing preponderance, however, tended to alienate the princes of Germany from Lothaire's views in favor of Henry. On the death of Lothaire, in 1138, the partisans of the house of Suabia made a hasty and irregular election of Conrad, in which the Saxon faction found itself obliged to acquiesce. The new emperor availed himself of the jealousy which Henry the Proud's aggrandizement had excited. Under pretense that two duchies could not legally be held by the same person, Henry was summoned to resign one of them; and on his refusal, the Diet pronounced that he had incurred a forfeiture of both. Henry made but little resistance, and before his death, which happened soon afterwards, saw himself stripped of all his hereditary as well as acquired possessions. Upon this occasion the famous names of Guelf and Ghibelin were first heard, which were destined to keep alive the flame of civil dissension in far distant countries, and after their meaning had been forgotten. The Guelfs, or Welfs, were, as I have said, the ancestors of Henry, and the name has become a sort of patronymic in his family. The word Ghibelin is

[1] Hohenstaufen is a castle in what is now the kingdom of Würtemberg, about four miles from the Göppingen station of the railway from Stuttgart to Ulm.

derived from Wibelung, a town in Franconia, whence the emperors of that line are said to have sprung. The house of Suabia was considered in Germany as representing that of Franconia; as the Guelfs may, without much impropriety, be deemed to represent the Saxon line.

Though Conrad III. left a son, the choice of the electors fell, at his own request, upon his nephew, Frederick Barbarossa. The most conspicuous events of this great emperor's life belong to the history of Italy. At home he was feared and respected; the imperial prerogatives stood as high during his reign as, after their previous decline, it was possible for a single man to carry them. But the only circumstance which appears memorable enough for the present sketch is the second fall of the Guelfs. Henry the Lion, son of Henry the Proud, had been restored by Conrad III. to his father's duchy of Saxony, resigning his claim to that of Bavaria, which had been conferred on the margrave of Austria. This renunciation, which indeed was only made in his name during childhood, did not prevent him from urging the Emperor Frederick to restore the whole of his birthright; and Frederick, his first-cousin, whose life he had saved in a sedition at Rome, was induced to comply with this request in 1156. Far from evincing that political jealousy which some writers impute to him, the emperor seems to have carried his generosity beyond the limits of prudence. For many years their union was apparently cordial. But, whether it was that Henry took umbrage at part of Frederick's conduct, or that mere ambition rendered him ungrateful, he certainly abandoned his sovereign in a moment of distress, refusing to give any assistance in that expedition into Lombardy which ended in the unsuccessful battle of Legnano. Frederick could not forgive this injury, and, taking advantage of complaints which Henry's power and haughtiness had produced, summoned him to answer charges in a general Diet. The duke refused to appear, and, being adjudged contumacious, a sentence of confiscation, similar to that which ruined his father, fell upon his head; and the vast imperial fiefs that he possessed were shared among some potent enemies. He made an ineffectual resistance: like his father, he appears to have owed more to fortune than to nature; and after three years' exile, was obliged to remain content with the restoration of his allodial estates in Saxony. These, fifty years afterwards, were converted into imperial fiefs, and became the two duchies of the house of Brunswick, the lineal representatives of Henry the Lion, and inheritors of the name of Guelf.

Notwithstanding the prevailing spirit of the German oligarchy, Frederick Barbarossa had found no difficulty in procuring the election of his son Henry, even during infancy, as his successor. The fall of Henry the Lion had greatly weakened the ducal authority in Saxony and Bavaria; the princes who acquired that title, especially in the former country, finding that the secular and spiritual nobility of the first class had taken the opportunity to raise themselves into an immediate dependence upon the empire. Henry VI. came, therefore, to the crown (A.D. 1190) with considerable advantages in respect of prerogative; and these inspired him with the bold scheme of declaring the empire hereditary. One is more surprised to find that he had no contemptible prospect of success in this attempt: fifty-two princes, and even what appears hardly credible, the See of Rome, under Clement III., having been induced to concur in it. But the Saxons made so vigorous an opposition that Henry did not think it advisable to persevere. He procured, however, the election of his son Frederick, an infant only two years old. But, the emperor dying almost immediately, a powerful body of princes, supported by Pope Innocent III., were desirous to withdraw their consent. Philip, duke of Suabia, the late king's brother, unable to secure his nephew's succession, brought about his own election by one party, while another chose Otho of Brunswick, younger son of Henry the Lion (A.D. 1198). This double election renewed the rivalry between Guelfs and Ghibelins, and threw Germany into confusion for several years. Philip, whose pretensions appear to be the more legitimate of the two, gained ground upon his adversary, nothwithstanding the opposition of the pope, till he was assassinated in consequence of a private resentment. Otho IV. reaped the benefit of a crime in which he did not participate (A.D. 1208), and became for some years undisputed sovereign. But, having offended the pope by not entirely abandoning his imperial rights over Italy, he had, in the latter part of his reign, to contend against Frederick, son of Henry VI., who, having grown up to manhood, came into Germany as heir of the house of Suabia, and, what was not very usual in his own history, or that of his family, the favored candidate of the Holy See. Otho IV. had been almost entirely deserted except by his natural subjects, when his death, in 1218, removed every difficulty, and left Frederick II. in the peaceable possession of Germany.

The eventful life of Frederick II. was chiefly passed in Italy. To preserve his hereditary dominions, and chastise

the Lombard cities, were the leading objects of his political and military career. He paid, therefore, but little attention to Germany, from which it was in vain for any emperor to expect effectual assistance towards objects of his own. Careless of prerogatives which it seemed hardly worth an effort to preserve, he sanctioned the independence of the princes, which may be properly dated from his reign. In return, they readily elected his son Henry king of the Romans; and on his being implicated in a rebellion, deposed him with equal readiness, and substituted his brother Conrad at the emperor's request. But in the latter part of Frederick's reign the deadly hatred of Rome penetrated beyond the Alps. After his solemn deposition in the council of Lyons, he was incapable, in ecclesiastical eyes, of holding the imperial sceptre. William, count of Holland, was chosen by the party adverse to Frederick and his son Conrad; and after the emperor's death he had some success against the latter. It is hard, indeed, to say that any one was actually sovereign for twenty-two years that followed the death of Frederick II.; a period of contested title and universal anarchy, which is usually denominated the GRAND INTERREGNUM (A.D. 1250–1272). On the decease of William of Holland, in 1257, a schism among the electors produced the double choice of Richard, earl of Cornwall, and Alfonso X., king of Castile. It seems not easy to determine which of these candidates had a legal majority of votes; but the subsequent recognition of almost all Germany, and a sort of possession evidenced by public acts, which have been held valid, as well as the general consent of contemporaries, may justify us in adding Richard to the imperial list. The choice, indeed, was ridiculous, as he possessed no talents which could compensate for his want of power; but the electors attained their objects—to perpetuate a state of confusion by which their own independence was consolidated, and to plunder without scruple a man like Didius at Rome, rich and foolish enough to purchase the first place upon earth.

§ 6. That place, indeed, was now become a mockery of greatness. For more than two centuries, notwithstanding the temporary influence of Frederick Barbarossa and his son, the imperial authority had been in a state of gradual decay. From the time of Frederick II. it had bordered upon absolute insignificance; and the more prudent German princes were slow to canvass for a dignity so little accompanied by respect. The changes wrought in the Germanic constitution during the period of the Suabian emperors chiefly consist in

the establishment of an oligarchy of electors, and of the territorial sovereignty of the princes.

(1.) At the extinction of the Franconian line by the death of Henry V. it was determined by the German nobility to make their empire practically elective, admitting no right, or even natural pretension, in the eldest son of a reigning sovereign. Their choice upon former occasions had been made by free and general suffrage. But it may be presumed that each nation voted unanimously, and according to the disposition of its duke. It is probable, too, that the leaders, after discussing in previous deliberations the merits of the several candidates, submitted their own resolutions to the assembly, which would generally concur in them without hesitation. At the election of Lothair, in 1124, we find an evident instance of this previous choice, or, as it was called, *prætaxation*, from which the electoral college of Germany has been derived. In the course of the twelfth century the other princes lost all voice in the election of the emperor, and the right of *prætaxation* was confined to SEVEN ELECTORS. But it is not easy to account for all the circumstances that gave to seven spiritual and temporal princes this distinguished pre-eminence. The three archbishops, Mentz, Treves, and Cologne, were always, indeed, at the head of the German Church. But the secular electors should naturally have been the dukes of four nations—Saxony, Franconia, Suabia, and Bavaria. We find, however, only the first of these in the undisputed exercise of a vote. It seems probable that, when the electoral princes came to be distinguished from the rest, their privilege was considered as peculiarly connected with the discharge of one of the great offices in the imperial court. These were attached, as early as the Diet of Mentz in 1184, to the four electors, who afterwards possessed them; the Duke of Saxony having then officiated as arch-marshal, the Count Palatine of the Rhine as arch-steward, the King of Bohemia as arch-cupbearer, and the Margrave of Brandenburg as arch-chamberlain of the empire.[2] But it still continues a problem why the three latter offices, with the electoral capacity as their incident,

[2] The names and offices of the seven are concisely given in these lines, which appear in the treatise of Marsilius Patavinus, *De Imperio Romano:*

"Moguntinensis, Trevirensis, Coloniensis,
Quilibet Imperii sit Cancellarius horum;
Et Palatinus dapifer, Dux portitor ensis,
Marchio præpositus cameræ, pincerna Bohemus,
Hi statuunt dominum cunctis per sæcula summum."

Bryce's "Holy Roman Empire," p. 262.

should not rather have been granted to the dukes of Franconia, Suabia, and Bavaria. The final extinction of two great original duchies, Franconia and Suabia, in the thirteenth century, left the electoral rights of the count palatine and the margrave of Brandenburg beyond dispute. But the dukes of Bavaria continued to claim a vote in opposition to the kings of Bohemia. At the election of Rodolph, in 1272, the two brothers of the house of Wittelsbach voted separately, as count palatine and duke of Lower Bavaria. Ottocar was excluded upon this occasion; and it was not till 1290 that the suffrage of Bohemia was fully recognized. The Palatine and Bavarian branches, however, continued to enjoy their family vote conjointly, by a determination of Rodolph; upon which Louis of Bavaria slightly innovated, by rendering the suffrage alternate. But the Golden Bull of Charles IV. (A.D. 1356) put an end to all doubts on the rights of electoral houses, and absolutely excluded Bavaria from voting. This Bull, which became the corner-stone of the German constitution, finally ascertained the prerogatives of the electoral college. The number was absolutely restrained to seven. The place of legal imperial elections was fixed at Frankfort; of coronations, at Aix-la-Chapelle; and the latter ceremony was to be performed by the archbishop of Cologne. These regulations, though consonant to ancient usage, had not always been observed, and their neglect had sometimes excited questions as to the validity of elections. The dignity of elector was enhanced by the Golden Bull as highly as an imperial edict could carry it; they were declared equal to kings, and conspiracy against their persons incurred the penalty of high treason.

(2.) It might appear natural to expect that an oligarchy of seven persons, who had thus excluded their equals from all share in the election of a sovereign, would assume still greater authority, and trespass further upon the less powerful vassals of the empire. But while the electors were establishing their peculiar privilege, the class immediately inferior raised itself by important acquisitions of power. The German dukes, even after they became hereditary, did not succeed in compelling the chief nobility within their limits to hold their lands in fief so completely as the peers of France had done. The nobles of Suabia refused to follow their duke into the field against the Emperor Conrad II. Of this aristocracy, the superior class were denominated princes; an appellation which, after the eleventh century, distinguished them from the untitled nobility, most of whom

were their vassals. They were constituent parts of all Diets; and though gradually deprived of their original participation in electing an emperor, possessed, in all other respects, the same rights as the dukes or electors. Some of them were fully equal to the electors in birth as well as extent of dominions; such as the princely houses of Austria, Hesse, Brunswick, and Misnia. By the division of Henry the Lion's vast territories, and by the absolute extinction of the Suabian family in the following century, a great many princes acquired additional weight. Of the ancient duchies, only Saxony and Bavaria remained; the former of which especially was so dismembered, that it was vain to attempt any renewal of the ducal jurisdiction. That of the emperor, formerly exercised by the counts palatine, went almost equally into disuse during the contest between Philip and Otho IV. The princes accordingly had acted with sovereign independence within their own fiefs before the reign of Frederick II.; but the legal recognition of their immunities was reserved for two edicts of that emperor; one, in 1220, relating to ecclesiastical, and the other, in 1232, to secular princes. By these he engaged neither to levy the customary imperial dues, nor to permit the jurisdiction of the palatine judges, within the limits of a state of the empire; concessions that amounted to little less than an abdication of his own sovereignty. From this epoch the territorial independence of the states may be dated.

A class of titled nobility, inferior to the princes, were the counts of the empire, who seem to have been separated from the former in the twelfth century, and to have lost at the same time their right of voting in the Diets.[3] In some parts of Germany, chiefly in Franconia and upon the Rhine, there always existed a very numerous body of lower nobility; untitled at least till modern times, but subject to no superior except the emperor. These are supposed to have become *immediate*, after the destruction of the house of Suabia, within whose duchies they had been comprehended.

§ 7. A short interval elapsed after the death of Richard of Cornwall before the electors could be induced, by the deplorable state of confusion into which Germany had fallen, to fill the imperial throne. Their choice was, however, the best that could have been made. It fell upon Rodolph, count of Hapsburg, a prince of very ancient family, and of considera-

[3] In the instruments relating to the election of Otho IV. the princes sign their names, Ego N. elegi et subscripsi. But the counts only as follows: Ego N. consensi et subscripsi.

ble possessions as well in Switzerland as upon each bank of the Upper Rhine, but not sufficiently powerful to alarm the electoral oligarchy (A.D. 1272). Rodolph was brave, active, and just; but his characteristic quality appears to have been good sense, and judgment of the circumstances in which he was placed. Of this he gave a signal proof in relinquishing the favorite project of so many preceding emperors, and leaving Italy altogether to itself. At home he manifested a vigilant spirit in administering justice, and is said to have destroyed seventy strongholds of noble robbers in Thuringia and other parts, bringing many of the criminals to capital punishment. But he wisely avoided giving offense to the more powerful princes; and during his reign there were hardly any rebellions in Germany.

It was a very reasonable object of every emperor to aggrandize his family by investing his near kindred with vacant fiefs; but no one was so fortunate in his opportunities as Rodolph. At his accession, Austria, Styria, and Carniola were in the hands of Ottocar, king of Bohemia. These extensive and fertile countries had been formed into a march, or margraviate, after the victories of Otho the Great over the Hungarians. Frederick Barbarossa erected them into a duchy, with many distinguished privileges, especially that of female succession, hitherto unknown in the feudal principalities of Germany. Upon the extinction of the house of Bamberg, which had enjoyed this duchy, it was granted by Frederick II. to a cousin of his own name; after whose death a disputed succession gave rise to several changes, and ultimately enabled Ottocar to gain possession of the country. Against this King of Bohemia Rodolph waged two successful wars, and recovered the Austrian provinces, which, as vacant fiefs, he conferred, with the consent of the Diet, upon his son Albert.

§ 8. Notwithstanding the merit and popularity of Rodolph, the electors refused to choose his son king of the Romans in his lifetime; and, after his death, determined to avoid the appearance of hereditary succession, put Adolphus of Nassau upon the throne (A.D. 1292). There is very little to attract notice in the domestic history of the empire during the next two centuries. From Adolphus to Sigismund every emperor had either to struggle against a competitor claiming the majority of votes at his election, or against a combination of the electors to dethrone him. The imperial authority became more and more ineffective; yet it was frequently made a subject of reproach against the emperors

that they did not maintain a sovereignty to which no one was disposed to submit.

It may appear surprising that the Germanic confederacy under the nominal supremacy of an emperor should have been preserved in circumstances apparently so calculated to dissolve it. But, besides the natural effect of prejudice and a famous name, there were sufficient reasons to induce the electors to preserve a form of government in which they bore so decided a sway. Accident had in a considerable degree restricted the electoral suffrages to seven princes. Without the college there were houses more substantially powerful than any within it. The duchy of Saxony had been subdivided by repeated partitions among children, till the electoral right was vested in a prince who possessed only the small territory of Wittenberg. The great families of Austria, Bavaria, and Luxemburg, though not electoral, were the real heads of the German body; and though the two former lost much of their influence for a time through the pernicious custom of partition, the empire seldom looked for its head to any other house than one of these three.

While the duchies and counties of Germany retained their original character of offices or governments, they were of course, even though considered as hereditary, not subject to partition among children. When they acquired the nature of fiefs, it was still consonant to the principles of a feudal tenure that the eldest son should inherit according to the law of primogeniture; an inferior provision or appanage, at most, being reserved for the younger children. The law of England favored the eldest exclusively; that of France gave him great advantages. But in Germany a different rule began to prevail about the thirteenth century. An equal partition of the inheritance, without the least regard to priority of birth, was the general law of its principalities. Sometimes this was effected by undivided possession, or tenancy in common, the brothers residing together, and reigning jointly. This tended to preserve the integrity of dominion; but as it was frequently incommodious, a more usual practice was to divide the territory. From such partitions are derived those numerous independent principalities of the same house, many of which still subsist in Germany. In 1589 there were eight reigning princes of the Palatine family; and fourteen, in 1675, of that of Saxony. Originally these partitions were in general absolute and without reversion; but, as their effect in weakening families became evident, a practice was introduced of making compacts of reciprocal

succession, by which a fief was prevented from escheating to the empire, until all the male posterity of the first feudatory should be extinct. Thus, while the German empire survived, all the princes of Hesse or of Saxony had reciprocal contingencies of succession, or what our lawyers call cross-remainders, to each other's dominions. A different system was gradually adopted. By the Golden Bull of Charles IV. the electoral territory, that is, the particular district to which the electoral suffrage was inseparably attached, became incapable of partition, and was to descend to the eldest son. In the fifteenth century the present house of Brandenburg set the first example of establishing primogeniture by law; the principalities of Anspach and Bayreuth were dismembered from it for the benefit of younger branches; but it was declared that all the other dominions of the family should for the future belong exclusively to the reigning elector. This politic measure was adopted in several other families; but, even in the sixteenth century, the prejudice was not removed, and some German princes denounced curses on their posterity if they should introduce the impious custom of primogeniture. Notwithstanding these subdivisions, and the most remarkable of those which I have mentioned are of a date rather subsequent to the Middle Ages, the antagonist principle of consolidation by various means of acquisition was so actively at work that several princely houses, especially those of Hohenzollern or Brandenburg, of Hesse, Wirtemburg, and the Palatinate, derive their importance from the same era, the fourteenth and fifteenth centuries, in which the prejudice against primogeniture was the strongest. And thus it will often be found in private patrimonies; the tendency to consolidation of property works more rapidly than that to its disintegration by a law of gavelkind.

§ 9. HOUSE OF LUXEMBURG.—Weakened by these subdivisions, the principalities of Germany in the fourteenth and fifteenth centuries shrink to a more and more diminutive size in the scale of nations. But one family, the most illustrious of the former age, was less exposed to this enfeebling system. Henry VII., count of Luxemburg, a man of much more personal merit than hereditary importance, was elevated to the empire in 1308. Most part of his short reign he passed in Italy; but he had a fortunate opportunity of obtaining the crown of Bohemia for his son. John, king of Bohemia, did not himself wear the imperial crown; but three of his descendants possessed it, with less interruption than could have been expected. His son Charles IV. succeeded Louis of Ba-

varia in 1347; not indeed without opposition, for a double election and a civil war were matters of course in Germany. Charles IV. has been treated with more derision by his contemporaries, and consequently by later writers, than almost any prince in history; yet he was remarkably successful in the only objects that he seriously pursued. Deficient in personal courage, insensible of humiliation, bending without shame to the pope, to the Italians, to the electors, so poor and so little reverenced as to be arrested by a butcher at Worms for want of paying his demand, Charles IV. affords a proof that a certain dexterity and cold-blooded perseverance may occasionally supply, in a sovereign, the want of more respectable qualities. He has been reproached with neglecting the empire. But he never designed to trouble himself about the empire, except for his private ends. He did not neglect the kingdom of Bohemia, to which he almost seemed to render Germany a province. Bohemia had been long considered as a fief of the empire, and indeed could pretend to an electoral vote by no other title. Charles, however, gave the states by law the right of choosing a king, on the extinction of the royal family, which seems derogatory to the imperial prerogative. It was much more material that, upon acquiring Brandenburg, partly by conquest, and partly by a compact of succession in 1373, he not only invested his sons with it, which was conformable to usage, but tried to annex that electorate forever to the kingdom of Bohemia. He constantly resided at Prague, where he founded a celebrated university, and embellished the city with buildings. This kingdom, augmented also during his reign by the acquisition of Silesia, he bequeathed to his son Wenceslaus, for whom, by pliancy towards the electors and the court of Rome, he had procured, against all recent example, the imperial succession.

The reign of Charles IV. is distinguished in the constitutional history of the empire by his GOLDEN BULL. (See p. 279.) The next reign evinced the danger of investing the electors with such preponderating authority. Wenceslaus, a supine and voluptuous man, less respected, and more negligent of Germany, if possible, than his father, was regularly deposed by a majority of the electoral college in 1400. This right, if it is to be considered as a right, they had already used against Adolphus of Nassau in 1298, and against Louis of Bavaria in 1346. They chose Robert count palatine instead of Wenceslaus; and though the latter did not cease to have some adherents, Robert has generally been counted among the lawful emperors. Upon his death the empire re-

turned to the house of Luxemburg; Wenceslaus himself waiving his rights in favor of his brother Sigismund of Hungary.

§ 10. The HOUSE OF AUSTRIA had hitherto given but two emperors to Germany, Rodolph, its founder, and his son Albert, whom a successful rebellion elevated in the place of Adolphus. Upon the death of Henry of Luxemburg, in 1313, Frederick, son of Albert, disputed the election of Louis, duke of Bavaria, alleging a majority of genuine votes. This produced a civil war, in which the Austrian party were entirely worsted. Though they advanced no pretensions to the imperial dignity during the rest of the fourteenth century, the princes of that line added to their possessions Carinthia, Istria, and the Tyrol. As a counterbalance to these acquisitions, they lost a great part of their ancient inheritance by unsuccessful wars with the Swiss. According to the custom of partition, so injurious to princely houses, their dominions were divided among three branches; one reigning in Austria, a second in Styria and the adjacent provinces, a third in the Tyrol and Alsace. This had in a considerable degree eclipsed the glory of the house of Hapsburg. But it was now its destiny to revive and to enter upon a career of prosperity which has never since been permanently interrupted. Albert, duke of Austria, who had married Sigismund's only daughter, the queen of Hungary and Bohemia, was raised to the imperial throne upon the death of his father-in-law in 1438. He died in two years, leaving his wife pregnant with a son, Ladislaus Posthumus, who afterwards reigned in the two kingdoms just mentioned; and the choice of the electors fell upon Frederick, duke of Styria, second-cousin of the last emperor, from whose posterity it never departed, except in a single instance, upon the extinction of his male line in 1740.

Frederick III. reigned fifty-three years (A.D. 1440–1493), a longer period than any of his predecessors; and his personal character was more insignificant. He reigned during an interesting age, full of remarkable events, and big with others of more leading importance. The destruction of the Greek empire, and appearance of the victorious crescent upon the Danube, gave an unhappy distinction to the earlier years of his reign, and displayed his mean and pusillanimous character in circumstances which demanded a hero. At a later season he was drawn into contentions with France and Burgundy, which ultimately produced a new and more general combination of European politics. Frederick, always poor, and scarcely able to protect himself in Austria from the seditions of his subjects, or the inroads of the King of Hungary, was

yet another founder of his family, and left their fortunes incomparably more prosperous than at his accession. The marriage of his son Maximilian with the heiress of Burgundy began that aggrandizement of the house of Austria which Frederick seems to have anticipated.[4] The electors, who had lost a good deal of their former spirit, and were grown sensible of the necessity of choosing a powerful sovereign, made no opposition to Maximilian's becoming king of the Romans in his father's lifetime. The Austrian provinces were re-united either under Frederick or in the first years of Maximilian; so that, at the close of that period which we denominate the Middle Ages, the German Empire, sustained by the patrimonial dominions of its chief, became again considerable in the scale of nations, and capable of preserving a balance between the ambitious monarchies of France and Spain.

§ 11. The period between Rodolph and Frederick III. is distinguished by no circumstance so interesting as the prosperous state of the free imperial cities, which had attained their maturity about the commencement of that interval. We find the cities of Germany, in the tenth century, divided into such as depended immediately upon the empire, which were usually governed by their bishop as imperial vicar, and such as were included in the territories of the dukes and counts. Gradually they began to elect councils of citizens, as a sort of Senate and magistracy. They were at first only assistants to the imperial or episcopal bailiff, who probably continued to administer criminal justice. But in the thirteenth century the citizens, grown richer and stronger, either purchased the jurisdiction, or usurped it through the lord's neglect, or drove out the bailiff by force. The great revolution in Franconia and Suabia occasioned by the fall of the Hohenstaufen family completed the victory of the cities. Those which had depended upon mediate lords became immediately connected with the empire; and with the empire in its state of feebleness, when an occasional present of money would easily induce its chief to acquiesce in any claims of immunity which the citizens might prefer.

It was a natural consequence of the importance which the free citizens had reached, and of their immediacy, that they were admitted to a place in the Diets, or general meetings of the confederacy. They were tacitly acknowledged to be

[4] The famous device of Austria, A. E. I. O. U., was first used by Frederick III., who adopted it on his plate, books, and buildings. These initials stand for, Austriæ Est Imperare Orbi Universo; or, in German, Alles Erdreich Ist Oesterreich Unterthan: a bold assumption for a man who was not safe in an inch of his dominions.

equally sovereign with the electors and princes, and under the emperor Henry VII. there is unequivocal mention of the three orders composing the Diet—electors, princes, and deputies from cities.

The inhabitants of these free cities always preserved their respect for the emperor, and gave him much less vexation than his other subjects. He was indeed their natural friend. But the nobility and prelates were their natural enemies; and the western parts of Germany were the scenes of irreconcilable warfare between the possessors of fortified castles and the inhabitants of fortified cities. Each party was frequently the aggressor. The nobles were too often mere robbers, who lived upon the plunder of travellers. But the citizens were almost equally inattentive to the rights of others. It was their policy to offer the privileges of burghership to all strangers. The peasantry of feudal lords, flying to a neighboring town, found an asylum constantly open. A multitude of aliens, thus seeking, as it were, sanctuary, dwelt in the suburbs, or liberties, between the city walls and the palisades which bounded the territory. Hence they were called Pfahlbürger, or burgesses of the palisades; and this encroachment on the rights of the nobility was positively, but vainly, prohibited by several imperial edicts, especially the Golden Bull. Another class were the Ausbürger, or outburghers, who had been admitted to privileges of citizenship, though resident at a distance, and pretended in consequence to be exempted from all dues to their original feudal superiors. If a lord resisted so unreasonable a claim, he incurred the danger of bringing down upon himself the vengeance of the citizens. These outburghers are in general classed under the general name of Pfahlbürger by contemporary writers.

As the towns were conscious of the hatred which the nobility bore towards them, it was their interest to make a common cause, and render mutual assistance. They withstood the bishops and barons by confederacies of their own, framed expressly to secure their commerce against rapine, or unjust exactions of toll. More than sixty cities, with three ecclesiastical electors at their head, formed the league of the Rhine, in 1255, to repel the inferior nobility, who, having now become immediate, abused that independence by perpetual robberies. The Hanseatic Union owes its origin to no other cause, and may be traced perhaps to rather a higher date. About the year 1370 a league was formed which, though it did not continue so long, seems to have produced

more striking effects in Germany. The cities of Suabia and the Rhine united themselves in a strict confederacy against the princes, and especially the families of Wirtemburg and Bavaria. It is said that the Emperor Wenceslaus secretly abetted their projects. The recent successes of the Swiss, who had now almost established their republic, inspired their neighbors in the empire with expectations which the event did not realize; for they were defeated in this war, and ultimately compelled to relinquish their league. Counter-associations were formed by the nobles, styled Society of St. George, St. William, the Lion, or the Panther.

§ 12. The spirit of political liberty was not confined to the free immediate cities. In all the German principalities a form of limited monarchy prevailed, reflecting, on a reduced scale, the general constitution of the empire. As the emperors shared their legislative sovereignty with the Diet, so all the princes who belonged to that assembly had their own provincial states, composed of their feudal vassals and of their mediate towns within their territory. No tax could be imposed without consent of the states; and, in some countries, the prince was obliged to account for the proper distribution of the money granted. In all matters of importance affecting the principality, and especially in case of partition, it was necessary to consult them; and they sometimes decided between competitors in a disputed succession, though this indeed more strictly belonged to the emperor. The provincial states concurred with the prince in making laws, except such as were enacted by the general Diet.

§ 13. The ancient imperial domain, or possessions which belonged to the chief of the empire as such, had originally been very extensive. Besides large estates in every province, the territory upon each bank of the Rhine, afterwards occupied by the counts palatine and ecclesiastical electors, was, until the thirteenth century, an exclusive property of the emperor. This imperial domain was deemed so adequate to the support of his dignity that it was usual, if not obligatory, for him to grant away his patrimonial domains upon his election. But the necessities of Frederick II., and the long confusion that ensued upon his death, caused the domain to be almost entirely dissipated. Rodolph made some efforts to retrieve it, but too late; and the poor remains of what had belonged to Charlemagne and Otho were alienated by Charles IV. This produced a necessary change in that part of the constitution which deprived an emperor of hereditary possessions. It was, however, some time before it took

place. Even Albert I. conferred the duchy of Austria upon his son, when he was chosen emperor. Louis of Bavaria was the first who retained his hereditary dominions, and made them his residence. Charles IV. and Wenceslaus lived almost wholly in Bohemia, Sigismund chiefly in Hungary, Frederick III. in Austria. This residence in their hereditary countries, while it seemed rather to lower the imperial dignity, and to lessen their connection with the general confederacy, gave them intrinsic power and influence. If the emperors of the houses of Luxemburg and Austria were not like the Conrads and Fredericks, they were at least very superior in importance to the Williams and Adolphuses of the thirteenth century.

§ 14. The accession of Maximilian nearly coincides with the expedition of Charles VIII. against Naples; and I should here close the German history of the Middle Age, were it not for the great epoch which is made by the Diet of Worms in 1495. This assembly is celebrated for the establishment of a perpetual public peace, and of a paramount court of justice, the Imperial Chamber.

The same causes which produced continual hostilities among the French nobility were not likely to operate less powerfully on the Germans, equally warlike with their neighbors, and rather less civilized. But while the imperial government was still vigorous, they were kept under some restraint. We find Henry III., the most powerful of the Franconian emperors, forbidding all private defiances, and establishing solemnly a general peace. After his time the natural tendency of manners overpowered all attempts to coerce it, and private war raged without limits in the empire. Frederick I. endeavored to repress it by a regulation which admitted its legality. This was the law of defiance (*jus diffidationis*), which required a solemn declaration of war, and three days' notice, before the commencement of hostile measures. All persons contravening this provision were deemed robbers and not legitimate enemies. War, indeed, legally undertaken, was not the only not the severest grievance. A very large proportion of the rural nobility lived by robbery. Their castles, as the ruins still bear witness, were erected upon inaccessible hills, and in defiles that command the public road. An archbishop of Cologne having built a fortress of this kind, the governor inquired how he was to maintain himself, no revenue having been assigned for that purpose: the prelate only desired him to remark that the castle was situated near the junction of four roads. As commerce in-

creased, and the example of French and Italian civilization rendered the Germans more sensible to their own rudeness, the preservation of public peace was loudly demanded. Every Diet under Frederick III. professed to occupy itself with the two great objects of domestic reformation, peace and law. Temporary cessations, during which all private hostility was illegal, were sometimes enacted; and, if observed, which may well be doubted, might contribute to accustom men to habits of greater tranquillity. The leagues of the cities were probably more efficacious checks upon the disturbers of order. In 1486 a ten years' peace was proclaimed, and before the expiration of this period the perpetual abolition of the right of defiance was happily accomplished in the Diet of Worms.

§ 15. The next object of the Diet was to provide an effectual remedy for private wrongs which might supersede all pretense for taking up arms. The *Imperial Chamber*, such was the name of the new tribunal, consisted, at its original institution, of a chief judge, who was to be chosen among the princes or counts, and of sixteen assessors, partly of noble or equestrian rank, partly professors of law. They were named by the emperor with the approbation of the Diet. The functions of the Imperial Chamber were chiefly the two following: (1.) They exercised an appellant jurisdiction over causes that had been decided by the tribunals established in states of the empire. But their jurisdiction in private causes was merely appellant. They were positively restricted from taking cognizance of any causes in the first instance, even where a state of the empire was one of the parties. It was enacted, to obviate the denial of justice that appeared likely to result from the regulation in the latter case, that every elector and prince should establish a tribunal in his own dominions, where suits against himself might be entertained. (2.) The second part of their jurisdiction related to disputes between two states of the empire. But these two could only come before it by way of appeal. During the period of anarchy which preceded the establishment of its jurisdiction, a custom was introduced, in order to prevent the constant recurrence of hostilities, of referring the quarrels of states to certain arbitrators, called Austregues, chosen among states of the same rank. This conventional reference became so popular that the princes would not consent to abandon it on the institution of the Imperial Chamber; but, on the contrary, it was changed into an invariable and universal law, that all disputes between different states must, in the first instance, be submitted to the arbitration of Austregues.

The sentences of the Chamber would have been very idly pronounced, if means had not been devised to carry them into execution. The empire, with the exception of the electorates and the Austrian dominions, was divided into six circles, each of which had its council of states, its director, whose province it was to convoke them, and its military force to compel obedience. In 1512 four more circles were added, comprehending those states which had been excluded in the first division.

§ 16. As the judges of the Imperial Chamber were appointed with the consent of the Diet, and held their sittings in a free imperial city, its establishment seemed rather to encroach on the ancient prerogatives of the emperors. Maximilian expressly reserved these in consenting to the new tribunal. And, in order to revive them, he soon afterwards instituted an *Aulic Council* at Vienna, composed of judges appointed by himself, and under the political control of the Austrian government. Though some German patriots regarded this tribunal with jealousy, it continued until the dissolution of the empire. The Aulic Council had, in all cases, a concurrent jurisdiction with the Imperial Chamber; an exclusive one in feudal and some other causes. But it was equally confined to cases of appeal; and these, by multiplied privileges, *de non appellando*, granted to the electoral and superior princely houses, were gradually reduced into moderate compass.

The Germanic constitution may be reckoned complete, as to all its essential characteristics, in the reign of Maximilian. In later times, and especially by the treaty of Westphalia, it underwent several modifications. Whatever might be its defects, and many of them seem to have been susceptible of reformation without destroying the system of government, it had one invaluable excellence: it protected the rights of the weaker against the stronger powers. The law of nations was first taught in Germany, and grew out of the public law of the empire. To narrow, as far as possible, the rights of war and of conquest, was a natural principle of those who belonged to petty states, and had nothing to tempt them in ambition.

§ 17. At the accession of Conrad I., Germany had by no means reached its present extent on the eastern frontier. Henry the Fowler and the Othos made great acquisitions upon that side. But tribes of Sclavonian origin, generally called Venedic, or, less properly, Vandal, occupied the northern coast from the Elbe to the Vistula. These were inde-

pendent, and formidable both to the kings of Denmark and princes of Germany, till, in the reign of Frederic Barbarossa, two of the latter, Henry the Lion, duke of Saxony, and Albert the Bear, margrave of Brandenburg, subdued Mecklenburg and Pomerania, which afterwards became duchies of the empire. Bohemia was undoubtedly subject, in a feudal sense, to Frederick I. and his successors; though its connection with Germany was always slight. The emperors sometimes assumed the sovereignty over Denmark, Hungary, and Poland. But what they gained upon this quarter was compensated by the gradual separation of the Netherlands from their dominion, and by the still more complete loss of the kingdom of Arles. The house of Burgundy possessed most part of the former, and paid as little regard as possible to the imperial supremacy; though the German Diets in the reign of Maximilian still continued to treat the Netherlands as equally subject to their lawful control with the states on the right bank of the Rhine. But the provinces between the Rhone and the Alps were absolutely separated; Switzerland had completely succeeded in establishing her own independence; and the kings of France no longer sought even the ceremony of an imperial investiture for Dauphiné and Provence.

§ 18. BOHEMIA, which received the Christian faith in the tenth century, was elevated to the rank of a kingdom near the end of the twelfth. The dukes and kings of Bohemia were feudally dependent upon the emperors, from whom they received investiture. They possessed, in return, a suffrage among the seven electors, and held one of the great offices in the imperial court. But separated by a rampart of mountains, by a difference of origin and language, and perhaps by natural prejudices, from Germany, the Bohemians withdrew as far as possible from the general politics of the confederacy. The kings obtained dispensations from attending the Diets of the empire, nor were they able to reinstate themselves in the privilege thus abandoned till the beginning of the last century. The government of this kingdom, in a very slight degree partaking of the feudal character, bore rather a resemblance to that of Poland; but the nobility were divided into two classes, the baronial and the equestrian, and the burghers formed a third state in the national Diet. For the peasantry, they were in a condition of servitude, or predial villenage. The royal authority was restrained by a coronation oath, by a permanent Senate, and by frequent assemblies of the Diet, where a numerous and armed nobility appeared to

secure their liberties by law or force. The sceptre passed, in ordinary times, to the nearest heir of the royal blood; but the right of election was only suspended, and no king of Bohemia ventured to boast of it as his inheritance. This mixture of elective and hereditary monarchy was common, as we have seen, to most European kingdoms in their original constitution, though few continued so long to admit the participation of popular suffrages.

The reigning dynasty having become extinct in 1306, by the death of Wenceslaus, son of that Ottocar who, after extending his conquests to the Baltic Sea, and almost to the Adriatic, had lost his life in an unsuccessful contention with the Emperor Rodolph, the Bohemians chose John of Luxemburg, son of Henry VII. Under the kings of this family in the fourteenth century, and especially Charles IV., whose character appeared in a far more advantageous light in his native domains than in the empire, Bohemia imbibed some portion of refinement and science. An university erected by Charles at Prague became one of the most celebrated in Europe. John Huss, rector of the university, who had distinguished himself by opposition to many abuses then prevailing in the Church, repaired to the council of Constance, under a safe-conduct from the Emperor Sigismund (A.D. 1416). In violation of this pledge, to the indelible infamy of that prince and of the council, he was condemned to be burned; and his disciple, Jerome of Prague, underwent afterwards the same fate. His countrymen, aroused by this atrocity, flew to arms. They found at their head one of those extraordinary men whose genius, created by nature and called into action by fortuitous events, appears to borrow no reflected light from that of others. John Zisca had not been trained in any school which could have initiated him in the science of war; that indeed, except in Italy, was still rude, and nowhere more so than in Bohemia. But, self-taught, he became one of the greatest captains who had hitherto appeared in Europe. It renders his exploits more marvellous that he was totally deprived of sight. Zisca has been called the inventor of the modern art of fortification; the famous mountain near Prague, fanatically called Tabor, became by his skill an impregnable intrenchment. For his stratagems he has been compared to Hannibal. In battle, being destitute of cavalry, he disposed at intervals ramparts of carriages filled with soldiers, to defend his troops from the enemy's horse. His own station was by the chief standard; where, after hearing the circumstances of the situation explained,

he gave his orders for the disposition of the army. Zisca was never defeated; and his genius inspired the Hussites with such enthusiastic affection, that some of those who had served under him refused to obey any other general, and denominated themselves Orphans, in commemoration of his loss. He was indeed a ferocious enemy, though some of his cruelties might, perhaps, be extenuated by the law of retaliation; but to his soldiers affable and generous, dividing among them all the spoil.

Even during the lifetime of Zisca the Hussite sect was disunited; the citizens of Prague and many of the nobility contenting themselves with moderate demands, while the Taborites, his peculiar followers, were actuated by a most fanatical frenzy. The former took the name of Calixtins, from their retention of the sacramental cup, of which the priests had latterly thought fit to debar laymen; an abuse so totally without pretense or apology, that nothing less than the determined obstinacy of the Romish Church could have maintained it to this time. The Taborites, though no longer led by Zisca, gained some remarkable victories, but were at last wholly defeated; while the Catholic and Calixtin parties came to an accommodation, by which Sigismund was acknowledged as King of Bohemia, which he had claimed by the title of heir to his brother Wenceslaus, and a few indulgences, especially the use of the sacramental cup, conceded to the moderate Hussites (A.D. 1433). But this compact, though concluded by the Council of Basle, being ill observed, through the perfidious bigotry of the See of Rome, the reformers armed again to defend their religious liberties, and ultimately elected a nobleman of their own party, by name George Podiebrad, to the throne of Bohemia, which he maintained during his life with great vigor and prudence (A.D. 1458). Upon his death they chose Uladislaus, son of Casimir, king of Poland (A.D. 1471), who afterwards obtained also the kingdom of Hungary. Both these crowns were conferred on his son Louis, after whose death in the unfortunate battle of Mohacz, Ferdinand of Austria became sovereign of the two kingdoms.

§ 19. The HUNGARIANS, that terrible people who laid waste the Italian and German provinces of the empire in the tenth century, became proselytes soon afterwards to the religion of Europe, and their sovereign, St. Stephen, was admitted by the pope into the list of Christian kings. Though the Hungarians were of a race perfectly distinct from either the Gothic or the Sclavonian tribes, their system of govern-

ment was in a great measure analogous. None indeed could be more natural to rude nations who had but recently accustomed themselves to settled possessions, than a territorial aristocracy, jealous of unlimited or even hereditary power in their chieftain, and subjugating the inferior people to that servitude which, in such a state of society, is the unavoidable consequence of poverty.

The marriage of a Hungarian princess with Charles II., king of Naples, eventually connected her country far more than it had been with the affairs of Italy. I have mentioned in a different place the circumstances which led to the invasion of Naples by Louis, king of Hungary (see p. 224). By marrying the eldest daughter of Louis, Sigismund, afterwards emperor, acquired the crown of Hungary, which upon her death without issue he retained in his own right, and was even able to transmit to the child of a second marriage, and to her husband Albert, duke of Austria. From this commencement is deduced the connection between Hungary and Austria. In two years, however, Albert dying left his widow pregnant; but the states of Hungary, jealous of Austrian influence, and of the intrigues of a minority, without waiting for her delivery, bestowed the crown upon Uladislaus, king of Poland (A.D. 1440). The birth of Albert's posthumous son, Ladislaus, produced an opposition in behalf of the infant's right; but the Austrian party turned out the weaker, and Uladislaus, after a civil war of some duration, became undisputed king. Meanwhile a more formidable enemy drew near. The Turkish arms had subdued all Servia, and excited a just alarm throughout Christendom. Uladislaus led a considerable force, to which the presence of the Cardinal Julian gave the appearance of a crusade, into Bulgaria, and, after several successes, concluded an honorable treaty with Amurath II. But this he was unhappily persuaded to violate, at the instigation of the cardinal, who abhorred the impiety of keeping faith with infidels. Heaven judged of this otherwise, if the judgment of Heaven was pronounced upon the field of Warna. In that fatal battle Uladislaus was killed, and the Hungarians utterly routed (A.D. 1444). The crown was now permitted to rest on the head of young Ladislaus; but the regency was allotted by the states of Hungary to a native warrior, John Hunniades. This hero stood in the breach for twelve years against the Turkish power, frequently defeated, but unconquered in defeat. If the renown of Hunniades may seem exaggerated by the partiality of writers who lived under the reign of his

son, it is confirmed by more unequivocal evidence, by the dread and hatred of the Turks, whose children were taught obedience by threatening them with his name, and by the deference of a jealous aristocracy to a man of no distinguished birth. He surrendered to young Ladislaus a trust that he had exercised with perfect fidelity! but his merit was too great to be forgiven, and the court never treated him with cordiality. The last and the most splendid service of Hunniades was the relief of Belgrade (A.D. 1456). That strong city was besieged by Mohammed II. three years after the fall of Constantinople; its capture would have laid open all Hungary. A tumultuary army, chiefly collected by the preaching of a friar, was intrusted to Hunniades; he penetrated into the city, and, having repulsed the Turks in a fortunate sally wherein Mohammed was wounded, had the honor of compelling him to raise the siege in confusion. The relief of Belgrade was more important in its effect than in its immediate circumstances. It revived the spirits of Europe, which had been appalled by the unceasing victories of the infidels. Mohammed himself seemed to acknowledge the importance of the blow, and seldom afterwards attacked the Hungarians. Hunniades died soon after this achievement, and was followed by the king, Ladislaus. The states of Hungary, although the Emperor Frederick III. had secured to himself, as he thought, the reversion, were justly averse to his character, and to Austrian connections. They conferred their crown on Matthias Corvinus, son of their great Hunniades (A.D. 1458). This prince reigned above thirty years with considerable reputation, to which his patronage of learned men, who repaid his munificence with very profuse eulogies, did not a little contribute. Hungary, at least in his time, was undoubtedly formidable to her neighbors, and held a respectable rank as an independent power in the republic of Europe.

§ 20. SWITZERLAND.—The kingdom of Burgundy or Arles comprehended the whole mountainous region which we now call Switzerland. It was accordingly reunited to the Germanic empire by the bequest of Rodolph along with the rest of his dominions. A numerous and ancient nobility, vassals one to another, or to the empire, divided the possession with ecclesiastical lords hardly less powerful than themselves. Of the former we find the counts of Zahringen, Kyburg, Hapsburg, and Tokenburg most conspicuous; of the latter, the Bishop of Coire, the Abbot of St. Gall, and Abbess of Seckingen. Every variety of feudal rights was early found

and long preserved in Helvetia; nor is there any country whose history better illustrates that ambiguous relation, half property and half dominion, in which the territorial aristocracy, under the feudal system, stood with respect to their dependents. In the twelfth century the Swiss towns rise into some degree of importance. Zurich was eminent for commercial activity, and seems to have had no lord but the emperor. Basle, though subject to its bishop, possessed the usual privileges of municipal government. Berne and Friburg, founded only in that century, made a rapid progress, and the latter was raised, along with Zurich, by Frederick II., in 1218, to the rank of a free imperial city. Several changes in the principal Helvetian families took place in the thirteenth century, before the end of which the house of Hapsburg, under the politic and enterprising Rodolph and his son Albert, became possessed, through various titles, of a great ascendency in Switzerland.

Of these titles none was more tempting to an ambitious chief than that of advocate to a convent. That specious name conveyed with it a kind of indefinite guardianship, and right of interference, which frequently ended in reversing the conditions of the ecclesiastical sovereign and its vassal. But during times of feudal anarchy there was perhaps no other means to secure the rich abbeys from absolute spoliation; and the free cities in their early stage sometimes adopted the same policy. Among other advocacies, Albert obtained that of some convents which had estates in the valleys of Schweitz and Underwald. These sequestered regions in the heart of the Alps had been for ages the habitation of a pastoral race, so happily forgotten, or so inaccessible in their fastnesses, as to have acquired a virtual independence, regulating their own affairs in their general assembly with a perfect equality, though they acknowledged the sovereignty of the empire. The people of Schweitz had made Rodolph their advocate. They distrusted Albert, whose succession to his father's inheritance spread alarm through Helvetia. It soon appeared that their suspicions were well founded. Besides the local rights which his ecclesiastical advocacies gave him over part of the forest cantons, he pretended, after his election to the empire, to send imperial bailiffs into their valleys, as administrators of criminal justice. Their oppression of a people unused to control, whom it was plainly the design of Albert to reduce into servitude, excited those generous emotions of resentment which a brave and simple race have seldom the discretion to repress. Three men, Stauf-

facher of Schweitz, Furst of Uri, Melchthal of Underwald, each with ten chosen associates, met by night in a sequestered field, and swore to assert the common cause of their liberties, without bloodshed or injury to the rights of others. Their success was answerable to the justice of their undertaking; the three cantons unanimously took up arms, and expelled their oppressors without a contest. Albert's assassination by his nephew, which followed soon afterwards, fortunately gave them leisure to consolidate their union (A.D. 1308). He was succeeded in the empire by Henry VII., jealous of the Austrian family, and not at all displeased at proceedings which had been accompanied with so little violence or disrespect for the empire. But Leopold, duke of Austria, resolved to humble the peasants, who had rebelled against his father, led a considerable force into their country. The Swiss, commending themselves to Heaven, and determined rather to perish than undergo that yoke a second time, though ignorant of regular discipline, and unprovided with defensive armor, utterly discomfited the assailants at Morgarten (A.D. 1315).

This great victory, the Marathon of Switzerland, confirmed the independence of the three original cantons. After some years, Lucerne, contiguous in situation and alike in interests, was incorporated into their confederacy. It was far more materially enlarged about the middle of the fourteenth century by the accession of Zurich, Glaris, Zug, and Berne, all which took place within two years. The first and last of these cities had already been engaged in frequent wars with the Helvetian nobility, and their internal polity was altogether republican. They acquired, not independence, which they already enjoyed, but additional security, by this union with the Swiss, properly so called, who in deference to their power and reputation ceded to them the first rank in the league. The eight already enumerated are called the ancient cantons, and continued, till the late reformation of the Helvetic system, to possess several distinctive privileges and even rights of sovereignty over subject territories, in which the five cantons of Friburg, Soleure, Basle, Schaffhausen, and Appenzell did not participate. From this time the united cantons, but especially those of Berne and Zurich, began to extend their territories at the expense of the rural nobility. The same contest between these parties, with the same termination, which we know generally to have taken place in Lombardy during the eleventh and twelfth centuries, may be traced with more minuteness in the annals of Switzerland.

Like the Lombards, too, the Helvetic cities acted with policy and moderation towards the nobles whom they overcame, admitting them to the franchises of their community as coburghers (a privilege which virtually implied a defensive alliance against any assailant), and uniformly respecting the legal rights of property. Many feudal superiorities they obtained from the owners in a more peaceable manner, through purchase or mortgage. Thus the house of Austria, to which the extensive domains of the counts of Kyburg had devolved, abandoning, after repeated defeats, its hopes of subduing the forest cantons, alienated a great part of its possessions to Zurich and Berne. And the last remnant of their ancient Helvetic territories in Argovia was wrested, in 1417, from Frederick, count of Tyrol, who, imprudently supporting Pope John XXIII. against the Council of Constance, had been put to the ban of the empire. These conquests Berne could not be induced to restore, and thus completed the independence of the confederate republics. The other free cities, though not yet incorporated, and the few remaining nobles, whether lay or spiritual, of whom the Abbot of St. Gall was the principal, entered into separate leagues with different cantons. Switzerland became, therefore, in the first part of the fifteenth century, a free country, acknowledged as such by neighboring states, and subject to no external control, though still comprehended within the nominal sovereignty of the empire.

The affairs of Switzerland occupy a very small space in the great chart of European history. But in some respects they are more interesting than the revolutions of mighty kingdoms. Nowhere besides do we find so many titles to our sympathy, or the union of so much virtue with so complete success. In the Italian republics a more splendid temple may seem to have been erected to liberty; but, as we approach, the serpents of faction hiss around her altar, and the form of tyranny flits among the distant shadows behind the shrine. Switzerland, not absolutely blameless (for what republic has been so?), but comparatively exempt from turbulence, usurpation, and injustice, has well deserved to employ the native pen of an historian accounted the most eloquent of the last age, Johann Müller. Other nations displayed an insuperable resolution in the defense of walled towns; but the steadiness of the Swiss in the field of battle was without a parallel, unless we recall the memory of Lacedæmon. It was even established as a law that whoever returned from battle after a defeat should forfeit his life by the hands of the executioner. Sixteen hundred men, who had been sent

to oppose a predatory invasion of the French in 1444, though they might have retreated without loss, determined rather to perish on the spot, and fell amidst a far greater heap of the hostile slain. At the famous battle of Sempach in 1385, the last which Austria presumed to try against the forest cantons, the enemy's knights, dismounted from their horses, presented an impregnable barrier of lances, which disconcerted the Swiss; till Winkelried, a gentleman of Underwald, commending his wife and children to his countrymen, threw himself upon the opposite ranks, and, collecting as many lances as he could grasp, forced a passage for his followers by burying them in his bosom.

The burghers and peasants of Switzerland, ill provided with cavalry, and better able to dispense with it than the natives of champaign countries, may be deemed the principal restorers of the Greek and Roman tactics, which place the strength of armies in a steady mass of infantry. Besides their splendid victories over the dukes of Austria and their own neighboring nobility, they had repulsed, in the year 1375, one of those predatory bodies of troops, the scourge of Europe in that age, and to whose licentiousness kingdoms and free states yielded alike a passive submission. They gave the dauphin, afterwards Louis XI., who entered their country in 1444 with a similar body of ruffians, called Armagnacs, the disbanded mercenaries of the English war, sufficient reason to desist from his invasion and to respect their valor. That able prince formed, indeed, so high a notion of the Swiss, that he sedulously cultivated their alliance during the rest of his life. He was made abundantly sensible of the wisdom of this policy when he saw his greatest enemy, the Duke of Burgundy, routed at Granson and Morat, and his affairs irrecoverably ruined, by these hardy republicans. The ensuing age is the most conspicuous, though not the most essentially glorious, in the history of Switzerland. Courted for the excellence of their troops by the rival sovereigns of Europe, and themselves too sensible both to ambitious schemes of dominion and to the thirst of money, the united cantons came to play a very prominent part in the wars of Lombardy, with great military renown, but not without some impeachment of that sterling probity which had distinguished their earlier efforts for independence. These events, however, do not fall within my limits; but the last year of the fifteenth century is a leading epoch, with which I shall close this sketch. Though the house of Austria had ceased to menace the liberties of Helvetia, and had even been for many

years its ally, the Emperor Maximilian, aware of the important service he might derive from the cantons in his projects upon Italy, as well as of the disadvantage he sustained by their partiality to French interest, endeavored to revive the unextinguished supremacy of the empire. That supremacy had just been restored in Germany by the establishment of the Imperial Chamber, and of a regular pecuniary contribution for its support, as well as for other purposes, in the Diet of Worms. The Helvetic cantons were summoned to yield obedience to these imperial laws; an innovation, for such the revival of obsolete prerogatives must be considered, exceedingly hostile to their republican independence, and involving consequences not less material in their eyes, the abandonment of a line of policy which tended to enrich, if not to aggrandize them. Their refusal to comply brought on a war, wherein the Tyrolese subjects of Maximilian, and the Suabian league, a confederacy of cities in that province lately formed under the emperor's auspices, were principally engaged against the Swiss. But the success of the latter was decisive; and after a terrible devastation of the frontiers of Germany, peace was concluded upon terms very honorable for Switzerland. The cantons were declared free from the jurisdiction of the Imperial Chamber, and from all contributions imposed by the Diet. Their right to enter into foreign alliance, even hostile to the empire, if it was not expressly recognized, continued unimpaired in practice; nor am I aware that they were at any time afterwards supposed to incur the crime of rebellion by such proceedings. Though, perhaps, in the strictest letter of public law, the Swiss cantons were not absolutely released from their subjection to the empire until the treaty of Westphalia, their real sovereignty must be dated by an historian from the year when every prerogative which a government can exercise was finally abandoned.

CHAPTER VI.

HISTORY OF THE GREEKS AND SARACENS.

§ 1. Rise of Mohammedism. § 2. Progress of Saracen Arms. § 3. Greek Empire. Decline of the Caliphs. § 4. The Greeks recover Part of their Losses. § 5. The Turks. § 6. The Crusades. Capture of Constantinople by the Latins. Its Recovery by the Greeks. § 7. The Moguls. The Ottomans. Timur. § 8. Capture of Constantinople by Mohammed II. § 9. Alarm of Europe.

§ 1. THE difficulty which occurs to us in endeavoring to fix a natural commencement of modern history even in the Western countries of Europe is much enhanced when we direct our attention to the Eastern Empire. But the appearance of Mohammed, and the conquests of his disciples, present an epoch in the history of Asia still more important and more definite than the subversion of the Roman Empire in Europe; and hence the boundary line between the ancient and modern divisions of Byzantine history will intersect the reign of Heraclius. That prince may be said to have stood on the verge of both hemispheres of time, whose youth was crowned with the last victories over the successors of Artaxerxes, and whose age was clouded by the first calamities of Mohammedan invasion.[1]

The prevalence of Islâm in the lifetime of its prophet, and during the first ages of its existence, was chiefly owing to the spirit of martial energy that he infused into it. The religion of Mohammed is as essentially a military system as the institution of chivalry in the west of Europe. The people of Arabia, a race of strong passions and sanguinary temper, inured to habits of pillage and murder, found in the law of their native prophet not a license, but a command, to desolate the world, and the promise of all that their glowing imaginations could anticipate of Paradise annexed to all in which they most delighted upon earth. Death, slavery, tribute, to unbelievers, were the glad tidings of the Arabian prophet. To the idolaters, indeed, or those who acknowledged no special revelation, one alternative only was proposed, conversion or the sword. The people of the Book, as they are termed in the Koran, or four sects of Christians, Jews, Magians, and Sabians, were permitted to redeem their adher-

[1] For a fuller account of the events, briefly narrated in this chapter, see "Student's Gibbon," ch. xxvii., *seq.*

ence to their ancient law by the payment of tribute, and other marks of humiliation and servitude. But the limits which Mohammedan intolerance had prescribed to itself were seldom transgressed; the word pledged to unbelievers was seldom forfeited; and with all their insolence and oppression, the Moslem conquerors were mild and liberal in comparison with those who obeyed the pontiffs of Rome or Constantinople.

§ 2. At the death of Mohammed in 632 his temporal and religious sovereignty embraced, and was limited by, the Arabian peninsula. The Roman and Persian empires, engaged in tedious and indecisive hostility upon the rivers of Mesopotamia and the Armenian mountains, were viewed by the ambitious fanatics of his creed as their quarry. In the very first year of Mohammed's immediate successor, Abubeker, each of these mighty empires was invaded. The latter opposed but a short resistance. The crumbling fabric of Eastern despotism is never secure against rapid and total subversion; a few victories, a few sieges, carried the Arabian arms from the Tigris to the Oxus, and overthrew, with the Sassanian dynasty, the ancient and famous religion they had professed. Seven years of active and unceasing warfare sufficed to subjugate the rich province of Syria, though defended by numerous armies and fortified cities (A.D. 632–639); and the caliph Omar had scarcely returned thanks for the accomplishment of this conquest, when Amrou, his lieutenant, announced to him the entire reduction of Egypt. After some interval the Saracens won their way along the coast of Africa as far as the Pillars of Hercules, and a third province was irretrievably torn from the Greek empire (A.D. 647–698). These Western conquests introduced them to fresh enemies, and ushered in more splendid successes; encouraged by the disunion of the Visigoths, and perhaps invited by treachery, Musa, the general of a master who sat beyond the opposite extremity of the Mediterranean Sea, passed over into Spain, and within about two years the name of Mohammed was invoked under the Pyrenees (A.D. 710).

§ 3. These conquests, which astonish the careless and superficial, are less perplexing to a calm inquirer than their cessation; the loss of half the Roman Empire, than the preservation of the rest. The fame of Heraclius had withered in the Syrian war; and his successors appeared as incapable to resist as they were unworthy to govern. But this depraved people were preserved from destruction by the vices of their enemies, still more than by some intrinsic resources

which they yet possessed. A rapid degeneracy enfeebled the victorious Moslem in their career. That irresistible enthusiasm, that earnest and disinterested zeal of the companions of Mohammed, was in a great measure lost, even before the first generation had passed away. In the fruitful valleys of Damascus and Bassora the Arabs of the desert forgot their abstemious habits. Rich from the tributes of an enslaved people, the Mohammedan sovereigns knew no employment of riches but in sensual luxury, and paid the price of voluptuous indulgence in the relaxation of their strength and energy. Under the reign of Moawiah, the fifth caliph, an hereditary succession was substituted for the free choice of the faithful, by which the first representatives of the prophet had been elevated to power; and this regulation, necessary, as it plainly was, to avert in some degree the dangers of schism and civil war, exposed the kingdom to the certainty of being often governed by feeble tyrants. But no regulation could be more than a temporary preservative against civil war. The dissensions which still separate and render hostile the followers of Mohammed may be traced to the first events that ensued upon his death, to the rejection of his son-in-law Ali by the electors of Medina. Two reigns, those of Abubeker and Omar, passed in external glory and domestic reverence; but the old age of Othman was weak and imprudent, and the conspirators against him established the first among a hundred precedents of rebellion and regicide. Ali was now chosen; but a strong faction disputed his right; and the Saracen empire was, for many years, distracted with civil war, among competitors who appealed, in reality, to no other decision than that of the sword. The family of Ommiyah succeeded at last in establishing an unresisted, if not an undoubted, title. But rebellions were perpetually afterwards breaking out in that vast extent of dominion, till one of these revolters acquired by success a better name than rebel, and founded the dynasty of the Abbasides (A.D. 750).

Damascus had been the seat of empire under the Ommiades; it was removed by the succeeding family to their new city of Bagdad. There are not any names in the long line of caliphs, after the companions of Mohammed, more renowned in history than some of the earlier sovereigns who reigned in this capital—Almansor, Haroun Alraschid, and Almamûn. Their splendid palaces, their numerous guards, their treasures of gold and silver, the populousness and wealth of their cities, formed a striking contrast to the rudeness and poverty of the Western nations in the same age.

In their court learning, which the first Moslem had despised as unwarlike or rejected as profane, was held in honor. The Caliph Almamûn especially was distinguished for his patronage of letters; the philosophical writings of Greece were eagerly sought and translated; the stars were numbered, the course of the planets was measured. The Arabians improved upon the science they borrowed, and returned it with abundant interest to Europe in the communication of numeral figures and the intellectual language of algebra. Yet the merit of the Abbasides has been exaggerated by adulation or gratitude. After all the vague praises of hireling poets, which have sometimes been repeated in Europe, it is very rare to read the history of an Eastern sovereign unstained by atrocious crimes. No Christian government, except perhaps that of Constantinople, exhibits such a series of tyrants as the caliphs of Bagdad, if deeds of blood, wrought through unbridled passion or jealous policy, may challenge the name of tyranny.

Though the Abbasides have acquired more celebrity, they never attained the real strength of their predecessors. Under the last of the house of Ommiyah, one command was obeyed almost along the whole diameter of the known world, from the banks of the Sihon to the utmost promontory of Portugal. But the revolution which changed the succession of caliphs produced another not less important. A fugitive of the vanquished family, by name Abdalrahman, arrived in Spain; and the Moslem of that country, not sharing in the prejudices which had stirred up the Persians in favor of the line of Abbas, and conscious that their remote situation entitled them to independence, proclaimed him Caliph of Cordova. There could be little hope of reducing so distant a dependency; and the example was not unlikely to be imitated. In the reign of Haroun Alraschid two principalities were formed in Africa—of the Aglabites, who reigned over Tunis and Tripoli; and of the Edrisites, in the western parts of Barbary. These yielded in about a century to the Fatimites, a more powerful dynasty, who afterwards established an empire in Egypt.

The loss, however, of Spain and Africa was the inevitable effect of that immensely extended dominion, which their separation alone would not have enfeebled. But other revolutions awaited it at home. In the history of the Abbasides of Bagdad we read over again the decline of European monarchies, through their various symptoms of ruin; and find successive analogies to the insults of the barbarians to-

wards imperial Rome in the fifth century, to the personal insignificance of the Merovingian kings, and to the feudal usurpations that dismembered the inheritance of Charlemagne. 1. Beyond the north-eastern frontier of the Saracen empire dwelt a warlike and powerful nation of the Tartar family, who defended the independence of Turkestan from the Sea of Aral to the great central chains of mountains. In the wars which the caliphs or their lieutenants waged against them many of these Turks were led into captivity, and dispersed over the empire. Their strength and courage distinguished them among a people grown effeminate by luxury; and that jealousy of disaffection among his subjects so natural to an Eastern monarch might be an additional motive with the Caliph Motassem to form bodies of guards out of these prisoners. But his policy was fatally erroneous. More rude and even more ferocious than the Arabs, they contemned the feebleness of the caliphate, while they grasped at its riches. The son of Motassem, Motawakkel, was murdered in his palace by the barbarians of the North; and his fate revealed the secret of the empire, that the choice of its sovereign had passed to their slaves. Degradation and death were frequently the lot of succeeding caliphs; but in the East the son leaps boldly on the throne which the blood of his father has stained, and the prætorian guards of Bagdad rarely failed to render a fallacious obedience to the nearest heir of the house of Abbas. 2. In about one hundred years after the introduction of the Turkish soldiers the sovereigns of Bagdad sunk almost into oblivion. Al Radi, who died in 940, was the last of these that officiated in the mosque, that commanded the forces in person, that addressed the people from the pulpit, that enjoyed the pomp and splendor of royalty. But he was the first who appointed, instead of a vizier, a new officer—a mayor, as it were, of the palace—with the title of Emir al Omra, commander of commanders, to whom he delegated by compulsion the functions of his office. This title was usually seized by active and martial spirits; it was sometimes hereditary, and in effect irrevocable by the caliphs, whose names hardly appear after this time in Oriental annals. 3. During these revolutions of the palace every province successively shook off its allegiance; new principalities were formed in Syria and Mesopotamia, as well as in Khorassan and Persia, till the dominion of the Commander of the Faithful was literally confined to the city of Bagdad and its adjacent territory. For a time some of these princes, who had been appointed as governors by the caliphs, pro-

fessed to respect his supremacy by naming him in the public prayers and upon the coin; but these tokens of dependence were gradually obliterated.

§ 4. Such is the outline of Saracenic history for three centuries after Mohammed; one age of glorious conquest; a second of stationary, but rather precarious, greatness; a third of rapid decline. The Greek empire meanwhile survived, and almost recovered from the shock it had sustained. The position of Constantinople, chosen with a sagacity to which the course of events almost gave the appearance of prescience, secured her from any immediate danger on the side of Asia, and rendered her as little accessible to an enemy as any city which valor and patriotism did not protect. Yet in the days of Arabian energy she was twice attacked by great naval armaments. The first siege, or rather blockade, continued for seven years (A.D. 668–675); the second, though shorter, was more terrible, and her walls, as well as her port, were actually invested by the combined forces of the Caliph Waled, under his brother Moslema (A.D. 716–718). The final discomfiture of these assailants showed the resisting force of the empire, or rather of its capital; but perhaps the abandonment of such maritime enterprises by the Saracens may be in some measure ascribed to the removal of their metropolis from Damascus to Bagdad. But the Greeks in their turn determined to dispute the command of the sea. By possessing the secret of an inextinguishable fire, they fought on superior terms: their wealth, perhaps their skill, enabled them to employ larger and better appointed vessels; and they ultimately expelled their enemies from the islands of Crete and Cyprus. By land they were less desirous of encountering the Moslem. But the increasing distractions of the East encouraged two brave usurpers, Nicephorus Phocas and John Zimisces, to attempt the actual recovery of the lost provinces (A.D. 963–975). They carried the Roman arms (one may use the term with less reluctance than usual) over Syria; Antioch and Aleppo were taken by storm; Damascus submitted; even the cities of Mesopotamia, beyond the ancient boundary of the Euphrates, were added to the trophies of Zimisces, who unwillingly spared the capital of the caliphate. From such distant conquests it was expedient, and indeed necessary, to withdraw; but Cilicia and Antioch were permanently restored to the empire. At the close of the tenth century the emperors of Constantinople possessed the best and greatest portion of the modern kingdom of Naples, a part of Sicily, the whole European dominions of the Otto-

mans, the province of Anatolia or Asia Minor, with some part of Syria and Armenia.

§ 5. These successes of the Greek empire were certainly much rather due to the weakness of its enemies than to any revival of national courage and vigor; yet they would probably have been more durable if the contest had been only with the caliphate, or the kingdoms derived from it. But a new actor was to appear on the stage of Asiatic tragedy. The same Turkish nation, the slaves and captives from which had become arbiters of the sceptre of Bagdad, passed their original limits of the Iaxartes or Sihon. The sultans of Ghazna, a dynasty whose splendid conquests were of very short duration, had deemed it politic to divide the strength of these formidable allies by inviting a part of them into Khorassan. They covered that fertile province with their pastoral tents, and beckoned their compatriots to share the riches of the South. The Ghaznevides fell the earliest victims (A.D. 1038); but Persia, violated in turn by every conqueror, was a tempting and unresisting prey. Togrol Bek, the founder of the Seljukian dynasty of Turks, overthrew the family of Bowides, who had long reigned at Ispahan, respected the pageant of Mohammedan sovereignty in the Caliph of Bagdad, embraced, with all his tribes, the religion of the vanquished, and commenced the attack upon Christendom by an irruption into Armenia (A.D. 1038–1063). His nephew and successor, Alp Arslan, defeated and took prisoner the Emperor Romanus Diogenes (A.D. 1071); and the conquest of Asia Minor was almost completed by princes of the same family, the Seljukians of Rûm,[3] who were permitted by Malek Shah, the third sultan of the Turks, to form an independent kingdom, of which Iconium was the capital. Through their own exertions, and the selfish impolicy of rival competitors for the throne of Constantinople, who bartered the strength of the empire for assistance, the Turks became masters of the Asiatic cities and fortified passes; nor did there seem any obstacle to the invasion of Europe.

§ 6. In this state of jeopardy, the Greek empire looked for aid to the nations of the West, and received it in fuller measure than was expected, or perhaps desired. The deliverance of Constantinople was, indeed, a very secondary object with the crusaders. But it was necessarily included in their scheme of operations, which, though they all tended to the recovery of Jerusalem, must commence with the first enemies that lay on their line of march. The Turks were entire-

[3] Rûm, *i.e.*, country of the Romans.

ly defeated, their capital of Nice restored to the empire. As the Franks passed onward, the Emperor Alexius Comnenus trod on their footsteps, and secured to himself the fruits for which their enthusiasm disdained to wait. He regained possession of the strong places on the Ægean shores, of the defiles of Bithynia, and of the entire coast of Asia Minor, both on the Euxine and Mediterranean seas, which the Turkish armies, composed of cavalry and unused to regular warfare, could not recover. So much must undoubtedly be ascribed to the first crusade. But I think that the general effect of these expeditions has been overrated by those who consider them as having permanently retarded the progress of the Turkish power. The Christians in Palestine and Syria were hardly in contact with the Seljukian kingdom of Rûm, the only enemies of the empire. Other causes are adequate to explain the equipoise in which the balance of dominion in Anatolia was kept during the twelfth century; the valor and activity of the two Comneni, John and Manuel, especially the former; and the frequent partitions and internal feuds, through which the Seljukians of Iconium, like all other Oriental governments, became incapable of foreign aggression.

But whatever obligation might be due to the first crusaders from the Eastern Empire was cancelled by their descendants one hundred years afterwards, when the fourth in number of those expeditions was turned to the subjugation of Constantinople itself. One of those domestic revolutions which occur perpetually in Byzantine history had placed an usurper on the imperial throne. The lawful monarch was condemned to blindness and a prison; but the heir escaped to recount his misfortunes to the fleet and army of crusaders assembled in the Dalmatian port of Zara. This armament had been collected for the usual purposes, and through the usual motives, temporal and spiritual, of a crusade; the military force chiefly consisted of French nobles; the naval was supplied by the Republic of Venice, whose doge commanded personally in the expedition. It was not, apparently, consistent with the primary object of retrieving the Christian affairs in Palestine to interfere in the government of a Christian empire; but the temptation of punishing a faithless people, and the hope of assistance in their subsequent operations, prevailed. They turned their prows up the Archipelago, and, notwithstanding the vast population and defensible strength of Constantinople, compelled the usurper to fly, and the citizens to surrender. But animosities springing from religious schism and national jealousy were not likely to be allayed

by such remedies; the Greeks, wounded in their pride and bigotry, regarded the legitimate emperor as a creature of their enemies, ready to sacrifice their Church, a stipulated condition of his restoration, to that of Rome. In a few months a new sedition and conspiracy raised another usurper in defiance of the crusaders' army encamped without the walls. The siege instantly recommenced, and after three months the city of Constantinople was taken by storm (A.D. 1204).

The lawful emperor and his son had perished in the rebellion that gave occasion to this catastrophe, and there remained no right to interfere with that of conquest. But the Latins were a promiscuous multitude, and what their independent valor had earned was not to be transferred to a single master. Though the name of emperor seemed necessary for the government of Constantinople, the unity of despotic power was very foreign to the principles and the interests of the crusaders. In their selfish schemes of aggrandizement they tore in pieces the Greek empire. One-fourth only was allotted to the emperor, three-eighths were the share of the Republic of Venice, and the remainder was divided among the chiefs. Baldwin, count of Flanders, obtained the imperial title, with the feudal sovereignty over the minor principalities. A monarchy thus dismembered had little prospect of honor or durability. The Latin emperors of Constantinople were more contemptible and unfortunate, not so much from personal character as political weakness, than their predecessors; their vassals rebelled against sovereigns not more powerful than themselves; the Bulgarians, a nation who, after being long formidable, had been subdued by the imperial arms, and only recovered independence on the eve of the Latin conquest, insulted their capital; the Greeks viewed them with silent hatred, and hailed the dawning deliverance from the Asiatic coast. On that side of the Bosporus the Latin usurpation was scarcely for a moment acknowledged; Nice became the seat of a Greek dynasty, who reigned with honor as far as the Mæander; and, crossing into Europe, after having established their dominion throughout Romania and other provinces, expelled the last Latin emperors from Constantinople in less than sixty years from its capture (A.D. 1261).

§ 7. During the reign of these Greeks at Nice they had fortunately little to dread on the side of their former enemies, and were generally on terms of friendship with the Seljukians of Iconium. That monarchy, indeed, had sufficient

objects of apprehension for itself. Their own example in changing the upland plains of Tartary for the cultivated valleys of the south was imitated in the thirteenth century by two successive hordes of Northern barbarians. The Karismians, whose tents had been pitched on the lower Oxus and Caspian Sea, availed themselves of the decline of the Turkish power to establish their dominion in Persia, and menaced, though they did not overthrow, the kingdom of Iconium. A more tremendous storm ensued in the irruption of Moguls under the sons of Zingis Khan. From the farthest regions of Chinese Tartary issued a race more fierce and destitute of civilization than those who had preceded, whose numbers were told by hundreds of thousands, and whose only test of victory was devastation. All Asia, from the Sea of China to the Euxine, wasted beneath the locusts of the North. They annihilated the phantom of authority which still lingered with the name of caliph at Bagdad. They reduced into dependence, and finally subverted, the Seljukian dynasties of Persia, Syria, and Iconium. The Turks of the latter kingdom betook themselves to the mountainous country, where they formed several petty principalities, which subsisted by incursions into the territory of the Moguls or the Greeks. The chief of one of these, named Othman, at the end of the thirteenth century, penetrated into the province of Bithynia, from which his posterity were never withdrawn.

The empire of Constantinople had never recovered the blow it received at the hands of the Latins. Most of the islands in the Archipelago, and the provinces of proper Greece, from Thessaly southward, were still possessed by those invaders. The wealth and naval power of the empire had passed into the hands of the maritime republics; Venice, Genoa, Pisa, and Barcelona were enriched by a commerce which they carried on as independent states within the precincts of Constantinople, scarcely deigning to solicit the permission or recognize the supremacy of its master. In a great battle fought under the walls of the city, between the Venetian and Genoese fleets, the weight of the Roman Empire, in Gibbon's expression, was scarcely felt in the balance of these opulent and powerful republics (A.D. 1352). Eight galleys were the contribution of the Emperor Cantacuzene to his Venetian allies; and upon their defeat he submitted to the ignominy of excluding them forever from trading in his dominions. Meantime the remains of the empire in Asia were seized by the independent Turkish dynasties, of which the most illustrious, that of the Ottomans, occupied the province

of Bithynia (A.D. 1431). Invited by a Byzantine faction into Europe about the middle of the fourteenth century, they fixed themselves in the neighborhood of the capital, and in the thirty years' reign of Amurath I. subdued, with little resistance, the province of Romania and the small Christian kingdoms that had been formed on the lower Danube. Bajazet, the successor of Amurath, reduced the independent emirs of Anatolia to subjection, and, after long threatening Constantinople, invested it by sea and land (A.D. 1396). The Greeks called loudly upon their brethren of the West for aid against the common enemy of Christendom; but the flower of French chivalry had been slain or taken in the battle of Nicopolis, in Bulgaria, where the King of Hungary, notwithstanding the heroism of these volunteers, was entirely defeated by Bajazet. The Emperor Manuel left his capital with a faint hope of exciting the courts of Europe to some decided efforts by personal representations of the danger; and, during his absence, Constantinople was saved, not by a friend indeed, but by a power more formidable to her enemies than to herself.

The loose masses of mankind, that, without laws, agriculture, or fixed dwellings, overspread the vast central regions of Asia, have, at various times, been impelled by necessity of subsistence, or through the casual appearance of a commanding genius, upon the domain of culture and civilization. Two principal roads connect the nations of Tartary with those of the west and south; the one into Europe, along the Sea of Azoph and northern coast of the Euxine; the other across the interval between the Bukharian Mountains and the Caspian into Persia. Four times at least within the period of authentic history the Scythian tribes have taken the former course, and poured themselves into Europe, but each wave was less effectual than the preceding. The first of these was in the fourth and fifth centuries, for we may range those rapidly successive migrations of the Goths and Huns together, when the Roman Empire fell to the ground, and the only boundary of barbarian conquest was the Atlantic Ocean upon the shores of Portugal. The second wave came on with the Hungarians in the tenth century, whose ravages extended as far as the southern provinces of France. A third attack was sustained from the Moguls, under the children of Zingis, at the same period as that which overwhelmed Persia. The Russian monarchy was destroyed in this invasion, and for two hundred years that great country lay prostrate under the yoke of the Tartars. As they advanced, Poland and Hungary gave little opposition, and the

farthest nations of Europe were appalled by the tempest. But Germany was no longer as she had been in the anarchy of the tenth century; the Moguls were unused to resistance, and still less inclined to regular warfare; they retired before the Emperor Frederick II., and the utmost points of their western invasion were the cities of Lignitz, in Silesia, and Neustadt, in Austria (A.D. 1245). In the fourth and last aggression of the Tartars their progress in Europe is hardly perceptible; the Moguls of Timur's army could only boast the destruction of Azoph and the pillage of some Russian provinces. Timur, the sovereign of these Moguls and founder of their second dynasty, which has been more permanent and celebrated than that of Zingis, had been the prince of a small tribe in Transoxiana, between the Gihon and Sirr, the doubtful frontier of settled and pastoral nations. His own energy and the weakness of his neighbors are sufficient to explain the revolution he effected. Like former conquerors, Togrol Bek and Zingis, he chose the road through Persia; and, meeting little resistance from the disordered governments of Asia, extended his empire on one side to the Syrian coast, while by successes still more renowned, though not belonging to this place, it reached, on the other, to the heart of Hindostan. In his old age the restlessness of ambition impelled him against the Turks of Anatolia. Bajazet hastened from the siege of Constantinople to a more perilous contest; his defeat and captivity in the plains of Angora clouded for a time the Ottoman crescent, and preserved the wreck of the Greek Empire for fifty years longer (A.D. 1402).

§ 8. The Moguls did not improve their victory; in the western parts of Asia, as in Hindostan, Timur was but a barbarian destroyer, though at Samarcand a sovereign and a legislator. He gave up Anatolia to the sons of Bajazet; but the unity of their power was broken; and the Ottoman kingdom, like those which had preceded, experienced the evils of partition and mutual animosity. For about twenty years an opportunity was given to the Greeks of recovering part of their losses; but they were incapable of making the best use of this advantage, and when Amurath II. reunited under his vigorous sceptre the Ottoman monarchy, Constantinople was exposed to another siege and to fresh losses (A.D. 1421). Her walls, however, repelled the enemy; and during the reign of Amurath she had leisure to repeat those signals of distress which the princes of Christendom refused to observe. Every province was in turn subdued—every city opened her gates to the conqueror: the limbs were lopped off one by

one; but the pulse still beat at the heart, and the majesty of the Roman name was ultimately confined to the walls of Constantinople. Before Mohammed II. planted his cannon against them, he had completed every smaller conquest and deprived the expiring empire of every hope of succor or delay. It was necessary that Constantinople should fall; but the magnanimous resignation of her emperor bestows an honor upon her fall which her prosperity seldom earned. The long deferred but inevitable moment arrived, and the last of the Cæsars (I will not say of the Palæologi) folded round him the imperial mantle, and remembered the name which he represented in the dignity of heroic death (A.D. 1453). It is thus that the intellectual principle, when enfeebled by disease or age, is found to rally its energies in the presence of death, and pour the radiance of unclouded reason around the last struggles of dissolution.

§ 9. Though the fate of Constantinople had been protracted beyond all reasonable expectation, the actual intelligence operated like that of sudden calamity. A sentiment of consternation, perhaps of self-reproach, thrilled to the heart of Christendom. There seemed no longer any thing to divert the Ottoman armies from Hungary; and if Hungary should be subdued, it was evident that both Italy and the German Empire were exposed to invasion. A general union of Christian powers was required to withstand this common enemy. But the popes, who had so often armed them against each other, wasted their spiritual and political counsels in attempting to restore unanimity. War was proclaimed against the Turks at the Diet of Frankfort, in 1454; but no efforts were made to carry the menace into execution. No prince could have sat on the imperial throne more unfitted for the emergency than Frederick III.; his mean spirit and narrow capacity exposed him to the contempt of mankind—his avarice and duplicity insured the hatred of Austria and Hungary. During the papacy of Pius II., whose heart was thoroughly engaged in this legitimate crusade, a more specious attempt was made by convening a European congress at Mantua. Almost all the sovereigns attended by their envoys: it was concluded that 50,000 men-at-arms should be raised, and a tax levied for three years of one-tenth from the revenues of the clergy, one-thirtieth from those of the laity, and one-twentieth from the capital of the Jews (A.D. 1459). Pius engaged to head this armament in person; but when he appeared next year at Ancona, the appointed place of embarkation, the princes had failed in all their promises of men and money, and he found only a headlong crowd of ad-

venturers, destitute of every necessary, and expecting to be fed and paid at the pope's expense. It was not by such a body that Mohammed could be expelled from Constantinople. If the Christian sovereigns had given a steady and sincere co-operation, the contest would still have been arduous and uncertain. In the early crusades the superiority of arms, of skill, and even of discipline, had been uniformly on the side of Europe. But the present circumstances were far from similar. An institution, begun by the first and perfected by the second Amurath, had given to the Turkish armies what their enemies still wanted, military subordination and veteran experience. Aware, as it seems, of the real superiority of Europeans in war, these sultans selected the stoutest youths from their Bulgarian, Servian, or Albanian captives, who were educated in habits of martial discipline, and formed into a regular force with the name of Janizaries. After conquest had put an end to personal captivity, a tax of every fifth male child was raised upon the Christian population for the same purpose. The arm of Europe was thus turned upon herself; and the Western nations must have contended with troops of hereditary robustness and intrepidity whose emulous enthusiasm for the country that had adopted them was controlled by habitual obedience to their commanders.

Yet forty years after the fall of Constantinople, at the epoch of Charles VIII.'s expedition into Italy, the just apprehensions of European statesmen might have gradually subsided. Except the Morea, Negropont, and a few other unimportant conquests, no real progress had been made by the Ottomans. Mohammed II. had been kept at bay by the Hungarians; he had been repulsed with some ignominy by the knights of St. John from the island of Rhodes. A petty chieftain defied this mighty conqueror for twenty years in the mountains of Epirus; and the persevering courage of his desultory warfare with such trifling resources, and so little prospect of ultimate success, may justify the exaggerated admiration with which his contemporaries honored the name of Scanderbeg. Once only the crescent was displayed on the Calabrian coast; but the city of Otranto remained but a year in the possession of Mohammed (A.D. 1480). On his death, a disputed succession involved his children in civil war. Bajazet, the eldest, obtained the victory; but his rival brother, Zizim, fled to Rhodes, from whence he was removed to France, and afterwards to Rome. Apprehensions of this exiled prince seem to have dictated a pacific policy to the reigning sultan, whose character did not possess the usual energy of Ottoman sovereigns.

CHAPTER VII.

HISTORY OF ECCLESIASTICAL POWER DURING THE MIDDLE AGES.

PART I.

§ 1. Wealth of the Clergy. Its Sources. § 2. Spoliation of Church Property. § 3. Ecclesiastical Jurisdiction. Arbitrative. Coercive. § 4. Political Power of the Church. § 5. Supremacy of the Crown. § 6. Charlemagne. § 7. Change after his Death, and Encroachments of the Church in the Ninth Century. § 8. Primacy of the See of Rome. Its early Stage. § 9. Gregory I. § 10. Council of Frankfort. § 11. False Decretals. § 12. Progress of Papal Authority. § 13. Excommunication. § 14. Interdicts. § 15. State of the Church in the Tenth Century. § 16. Marriage of Priests. § 17. Simony. Episcopal Elections. § 18. Imperial Authority over the Popes. § 19. Disputes concerning Investitures. Gregory VII. and Henry IV. Concordat of Calixtus. § 20. Election by Chapters. § 21. General System of Gregory VII. § 22. Progress of Papal Usurpations in the Twelfth Century. § 23. Innocent III. His Character and Schemes.

LIST OF POPES DURING THE MIDDLE AGES.

Year of Accession. A.D.	
795	Leo III.
816	Stephen IV.
817	Paschal I.
824	Eugenius II.
827	Valentinus.
827	Gregory IV.
844	Sergius II.
842	Leo IV.
856	Benedict III.
858	Nicholas I.
867	Hadrian II.
872	John VIII.
882	Martin II.
884	Hadrian III.
885	Stephen V.
891	Formosus.
896	Boniface VI.
896	Stephen VI.
897	Romanus.
898	Theodore II.
898	John IX.
900	Benedict IV.
903	Leo V.
903	Christopher.
904	Sergius III.
912(?)	Anastasius III.
913	Landō.
914	John X.
928	Leo VI.
929	Stephen VII.
931	John XI.
936	Leo VII.
939	Stephen VIII.
942(?)	Martin III.
946	Agapetus II.
955	John XII.
963	Leo VIII.
964	Benedict V. (Anti-pope?)
965	John XIII.
972	Benedict VI.
974	Boniface VII. (?).
974	Domnus II. (?).
974	Benedict VII.
983	John XIV.
984	John XV.
996	Gregory V.
996	John XVI.
1000	Sylvester II.
1003	John XVII.
1003	John XVIII.
1009	Sergius IV.
1012	Benedict VIII.

Year of Accession. A.D.	
1024	John XIX.
1033	Benedict IX.
1044	Sylvester (Anti-pope).
1045 (?)	Gregory VI.
1046	Clement II.
1048	Damasus II.
1048	Leo IX.
1054	Victor II.
1057	Stephen IX.
1058	Benedict X.
1059	Nicholas II.
1061	Alexander II.
1073	Gregory VII. (Hildebrand).
1080	(Clement, Anti-pope).
1086	Victor III.
1087	Urban II.
1099	Paschal II.
1118	Gelasius II.
1119	Calixtus II.
	(Gregory, Anti-pope).
1121	(Celestine, Anti-pope).
1124	Honorius II.
1130	Innocent II.
	(Anacletus, Anti-pope).
1143	Celestine II.
1144	Lucius II.
1145	Eugenius III.
1153	Anastasius IV.
1154	Hadrian IV.
1160	Alexander III.
1160	(Victor, Anti-pope).
1164	(Paschal III., Anti-pope).
1168	(Calixtus, Anti-pope).
1180	Lucius III.
1185	Urban III.
1187	Gregory VIII.
1187	Clement III.
1191	Celestine III.
1198	Innocent III.
1216	Honorius III.
1227	Gregory IX.
1241	Celestine IV.
1241	Vacancy.
1243	Innocent IV.
1255	Alexander IV.

Year of Accession. A.D.	
1261	Urban IV.
1266	Clement IV.
1269	Vacancy.
1271	Gregory X.
1276	Innocent V.
1276	Hadrian V.
1277	John XX. or XXI.
1277	Nicholas III.
1281	Martin IV.
1285	Honorius IV.
1289	Nicholas IV.
1294	Celestine V.
1294	Boniface VIII.
	Popes at Avignon.
1303	Benedict XI.
1305	Clement V.
1316	John XXI. or XXII.
1334	Benedict XII.
1342	Clement VI.
1352	Innocent VI.
1362	Urban V.
	Return to Rome.
1370	Gregory XI.
	The great Schism.
1378	Urban VI., Clement VII.
1389	Boniface IX.
1394	Benedict (Anti-pope).
1404	Innocent VII.
1406	Gregory XII.
1409	Alexander V.
1410	John XXII. or XXIII.
1417	Martin V.
1431	Eugene IV.
1455	Calixtus IV.
1458	Pius II.
1464	Paul II.
1471	Sixtus IV.
1484	Innocent VIII.
1493	Alexander VI.
1503	Pius III.
1503	Julius II.
1513	Leo X.

§ 1. At the irruption of the northern invaders into the Roman Empire they found the clergy already endowed with extensive possessions. Besides the spontaneous oblations upon which the ministers of the Christian Church had originally subsisted, they had obtained, even under the pagan emperors, by concealment or connivance—for the Roman law

did not permit a tenure of lands in mortmain—certain immovable estates, the revenues of which were applicable to their own maintenance and that of the poor. These, indeed, were precarious, and liable to confiscation in times of persecution. But it was among the first effects of the conversion of Constantine to give not only a security, but a legal sanction, to the territorial acquisitions of the Church. The Edict of Milan, in 313, recognizes the actual estates of ecclesiastical corporations. Another, published in 321, grants to all the subjects of the empire the power of bequeathing their property to the Church. His own liberality and that of his successors set an example which did not want imitators. Passing rapidly from a condition of distress and persecution to the summit of prosperity, the Church degenerated as rapidly from her ancient purity, and forfeited the respect of future ages in the same proportion as she acquired the blind veneration of her own. Covetousness, especially, became almost a characteristic vice.

The devotion of the conquering nations, as it was still less enlightened than that of the subjects of the empire, so was it still more munificent. The ecclesiastical hierarchy never received any territorial endowment by law, either under the Roman Empire or the kingdoms erected upon its ruins. But the voluntary munificence of princes, as well as their subjects, amply supplied the place of a more universal provision. Large private estates, or, as they were termed, patrimonies, not only within their own dioceses, but sometimes in distant countries, sustained the dignity of the principal sees, and especially that of Rome. But it must be remarked that many of these donations are of lands uncultivated and unappropriated. The monasteries acquired legitimate riches by the culture of these deserted tracts and by the prudent management of their revenues, which were less exposed to the ordinary means of dissipation than those of the laity. If the possessions of ecclesiastical communities had all been as fairly earned, we could find nothing in them to reprehend. But other sources of wealth were less pure, and they derived their wealth from many sources. Those who entered into a monastery threw frequently their whole estates into the common stock; and even the children of rich parents were expected to make a donation of land on assuming the cowl. Some gave their property to the Church before entering on military expeditions; gifts were made by some to take effect after their lives, and bequests by many in the terrors of dissolution. Even those legacies to charitable purposes, which

the clergy could with more decency and speciousness recommend, and of which the administration was generally confined to them, were frequently applied to their own benefit. They failed not, above all, to inculcate upon the wealthy sinner that no atonement could be so acceptable to Heaven as liberal presents to its earthly delegates. To die without allotting a portion of worldly wealth to pious uses was accounted almost like suicide, or a refusal of the last sacraments; and hence intestacy passed for a sort of fraud upon the Church, which she punished by taking the administration of the deceased's effects into her own hands. This, however, was peculiar to England, and seems to have been the case there only from the reign of Henry III. to that of Edward III., when the bishop took a portion of the intestate's personal estate for the advantage of the Church and poor, instead of distributing it among his next of kin. The canonical penances imposed upon repentant offenders, extravagantly severe in themselves, were commuted for money or for immovable possessions—a fertile though scandalous source of monastic wealth, which the popes afterwards diverted into their own coffers by the usage of dispensations and indulgences. The Church lands enjoyed an immunity from taxes, though not in general from military service, when of a feudal tenure.[1] But their tenure was frequently in what was called frankalmoigne, without any obligation of service. Hence it became a customary fraud of lay proprietors to grant estates to the Church, which they received again by way of fief or lease, exempted from public burdens.

As an additional source of revenue, and in imitation of the Jewish law, the payment of tithes was recommended or enjoined. These, however, were not applicable at first to the maintenance of a resident clergy. Parochial divisions, as they now exist, did not take place, at least in some countries, till several centuries after the establishment of Christianity. The rural churches, erected successively as the necessities of a congregation required or the piety of a landlord suggested, were in fact a sort of chapels dependent on the cathedral, and served by itinerant ministers at the bishop's discretion. The bishop himself received the tithes, and apportioned them as he thought fit. A capitulary of Charlemagne, however, regulates their division into three parts:

[1] Palgrave has shown that the Anglo-Saxon clergy were not exempt, originally at least, from the *trinoda necessitas* imposed on all allodial proprietors. They were better treated on the Continent; and Boniface exclaims that in no part of the world was such servitude imposed on the Church as among the English.

one for the bishop and his clergy, a second for the poor, and a third for the support of the fabric of the Church. Some of the rural churches obtained by episcopal concessions the privileges of baptism and burial, which were accompanied with a fixed share of tithes, and seemed to imply the residence of a minister. The same privileges were gradually extended to the rest; and thus a complete parochial division was finally established. But this was hardly the case in England till near the time of the Conquest.[2] About the year 1200, the obligation of paying tithes, which had been originally confined to those called predial, or the fruits of the earth, was extended, at least in theory, to every species of profit, and to the wages of every kind of labor.

§ 2. Yet there were many hindrances that thwarted the clergy in their acquisition of opulence, and a sort of reflux that set sometimes very strongly against them. In times of barbarous violence nothing can thoroughly compensate for the inferiority of physical strength and prowess. The ecclesiastical history of the Middle Ages presents one long contention of fraud against robbery; of acquisitions made by the Church through such means as I have described, and torn from her by lawless power. Notwithstanding the frequent instances of extreme reverence for religious institutions among the nobility, we should be deceived in supposing this to be their general character. Rapacity, not less insatiable than that of the abbots, was commonly united with a daring fierceness that the abbots could not resist.[3]

[2] The grant of Ethelwolf in 855 has appeared to some antiquaries the most probable origin of the general right to tithes in England. This grant is recorded in two charters; the first transcribed in Ingulfus's "History of Croyland," and dated at Winchester on the Nones of November, 855; the second extant in two chartularies, and bearing date at Wilton, April 22, 854. But the latter is marked by Mr. Kemble as spurious (Codex Ang.-Sax. Diplom., ii., 52); and the work of Ingulfus is also regarded as spurious. The fact, however, that Ethelwolf made some great and general donation to the Church rests on the authority of Asser, whom later writers have principally copied. His words are, "Eodem quoque anno (855) Adelwolfus venerabilis, rex Occidentalium Saxonum, decimam totius regni sui partem ab omni regali servitio et tributo liberavit, et in sempiterno grafio in cruce Christi, pro redemptione animæ suæ et antecessorum suorum, Uni et Trino Deo immolavit." (Gale, XV., Script. iii., 156.) It is really difficult to infer any thing from such a passage; but whatever the writer may have meant, or whatever truth there may be in his story, it seems impossible to strain his words into a grant of tithes.

[3] The Church was often compelled to grant leases of her lands, under the name of *precariæ*, to laymen who probably rendered little or no service in return, though a rent or *census* was expressed in the instrument. These *precariæ* seem to have been for life, but were frequently renewed. They are not to be confounded with *terræ censuales*, or lands let to a tenant at rack-rent, which of course formed a considerable branch of revenue. The grant was called *precaria* from being obtained at the prayer of the grantee; and the uncertainty of its renewal seems to have given rise to the adjective *precarious*. In the ninth century, though the pretensions of the bishops were never higher, the Church itself was more pillaged under pretext of these *precariæ*, and in other ways, than at any former time.

In every country we find continual lamentation over the plunder of ecclesiastical possessions. The parochial tithes, especially, as the hand of robbery falls heaviest upon the weak, were exposed to unlawful seizure. In the tenth and eleventh centuries nothing was more common than to see the revenues of benefices in the hands of lay impropriators, who employed curates at the cheapest rate, an abuse that has never ceased in the Church. Both the bishops and convents were obliged to invest powerful lay protectors, under the name of advocates, with considerable fiefs, as the price of their assistance against depredators. But these advocates became too often themselves the spoilers, and oppressed the helpless ecclesiastics for whose defense they had been engaged. If it had not been for these drawbacks, the clergy must, one would imagine, have almost acquired the exclusive property of the soil. They did enjoy, according to some authorities, nearly one half of England, and, I believe, a greater proportion in some countries of Europe. They had reached, perhaps, their zenith in respect of territorial property about the conclusion of the twelfth century.[4] After that time the disposition to enrich the clergy by pious donations grew more languid, and was put under certain legal restraints, to which I shall hereafter advert; but they became rather more secure from forcible usurpations.

§ 3. The acquisitions of wealth by the Church were hardly so remarkable, and scarcely contributed so much to her greatness, as those innovations upon the ordinary course of justice which fall under the head of ecclesiastical jurisdiction and immunity. Episcopal jurisdiction, properly so called, may be considered as depending upon the choice of litigant parties, upon their condition, and upon the subject-matter of their differences.

1. *Arbitrative Authority.* — The arbitrative authority of ecclesiastical pastors, if not coeval with Christianity, grew up very early in the Church, and was natural, or even necessary, to an insulated and persecuted society.[5] Accustomed to feel a strong aversion to the imperial tribunals, and even to consider a recurrence to them as hardly consistent with their profession, the early Christians retained somewhat of a similar prejudice, even after the establishment of their religion. The arbitration of their bishops still seemed a less objectionable mode of settling differences. And this arbitrative jurisdiction was powerfully supported by a law of

[4] The great age of monasteries in England was the reigns of Henry I., Stephen, and Henry II.

[5] See 1 Corinth. vi., 4.

Constantine, which directed the civil magistrate to enforce the execution of episcopal awards. But the Church had no jurisdiction in questions of a temporal nature, except by means of the joint reference of contending parties.

2. *Coercive Authority.*—If it was considered almost as a general obligation upon the primitive Christians to decide their civil disputes by internal arbitration, much more would this be incumbent upon the clergy. The canons of several councils, in the fourth and fifth centuries, sentence a bishop or priest to deposition who should bring any suit, civil or even criminal, before a secular magistrate. This must, it should appear, be confined to causes where the defendant was a clerk; since the ecclesiastical court had hitherto no coercive jurisdiction over the laity. But the early Merovingian kings adopted the exclusive jurisdiction of the bishop over causes wherein clerks were interested, without any of the checks which Justinian had provided. Many laws enacted during their reigns, and under Charlemagne, strictly prohibit the temporal magistrates from entertaining complaints against the children of the Church.

This jurisdiction over the civil causes of clerks was not immediately attended with an equally exclusive cognizance of criminal offenses imputed to them, wherein the state is so deeply interested, and the Church could inflict so inadequate a punishment. Justinian appears to have reserved such offenses for trial before the imperial magistrate, though with a material provision that the sentence against a clerk should not be executed without the consent of the bishop or the final decision of the emperor. The bishop is not expressly invested with this controlling power by the laws of the Merovingians; but they enact that he must be present at the trial of one of his clerks; which probably was intended to declare the necessity of his concurrence in the judgment. The episcopal order was, indeed, absolutely exempted from secular jurisdiction by Justinian; a privilege which it had vainly endeavored to establish under the earlier emperors. France permitted the same immunity; Chilperic, one of the most arbitrary of her kings, did not venture to charge some of his bishops with treason, except before a council of their brethren. Finally, Charlemagne seems to have extended to the whole body of the clergy an absolute exemption from the judicial authority of the magistrate.

3. The character of a cause, as well as of the parties engaged, might bring it within the limits of ecclesiastical jurisdiction. In all questions simply religious the Church had

an original right of decision; in those of a temporal nature the civil magistrate had, by the imperial constitution, as exclusive an authority. Later ages witnessed strange innovations in this respect, when the spiritual courts usurped, under sophistical pretenses, almost the whole administration of justice. But these encroachments were not, I apprehend, very striking till the twelfth century; and as about the same time measures, more or less vigorous and successful, began to be adopted in order to restrain them, I shall defer this part of the subject for the present.

§ 4. In this sketch of the riches and jurisdiction of the hierarchy, I may seem to have implied their political influence, which is naturally connected with the two former. They possessed, however, more direct means of acquiring temporal power. Even under the Roman emperors they had found their roads into palaces; but they assumed a far more decided influence over the new kingdoms of the West. They were entitled, in the first place, by the nature of those free governments, to a privilege unknown under the imperial despotism, that of assisting in the deliberative assemblies of the nation. Councils of bishops, such as had been convoked by Constantine and his successors, were limited in their functions to decisions of faith or canons of ecclesiastical discipline. But the Northern nations did not so well preserve the distinction between secular and spiritual legislation. The laity seldom, perhaps, gave their suffrage to the canons of the Church; but the Church was not so scrupulous as to trespassing upon the province of the laity. Many provisions are found in the canons of national and even provincial councils which relate to the temporal constitution of the state. Thus one held at Calcluith (an unknown place in England), in 787, enacted that none but legitimate princes should be raised to the throne, and not such as were engendered in adultery or incest. But it is to be observed that, although this synod was strictly ecclesiastical, being summoned by the pope's legate, yet the kings of Mercia and Northumberland, with many of their nobles, confirmed the canons by their signature.

The bishops acquired and retained a great part of their ascendency by a very respectable instrument of power—intellectual superiority. As they alone were acquainted with the art of writing, they were naturally intrusted with political correspondence, and with the framing of the laws. As they alone knew the elements of a few sciences, the education of royal families devolved upon them as a necessary

duty. In the fall of Rome, their influence upon the barbarians wore down the asperities of conquest, and saved the provincials half the shock of that tremendous revolution. As captive Greece is said to have subdued her Roman conqueror, so Rome, in her own turn of servitude, cast the fetters of a moral captivity upon the fierce invaders of the North. Chiefly through the exertions of the bishops, whose ambition may be forgiven for its effects, her religion, her language, in part even her laws, were transplanted into the courts of Paris and Toledo, which became a degree less barbarous by imitation.

§ 5. Notwithstanding, however, the great authority and privileges of the Church, it was decidedly subject to the supremacy of the crown, both during the continuance of the Western Empire and after its subversion. The emperors convoked, regulated, and dissolved universal councils; the kings of France and Spain exercised the same right over the synods of their national churches. The Ostrogoth kings of Italy fixed by their edicts the limits within which matrimony was prohibited on account of consanguinity, and granted dispensations from them. Though the Roman emperors left episcopal elections to the clergy and people of the diocese, in which they were followed by the Ostrogoths and Lombards, yet they often interfered so far as to confirm a decision or to determine a contest. The kings of France went farther, and seem to have invariably either nominated the bishops, or, what was nearly tantamount, recommended their own candidate to the electors.

§ 6. But the sovereign who maintained with the greatest vigor his ecclesiastical supremacy was Charlemagne. Most of the capitularies of his reign relate to the discipline of the Church; principally, indeed, taken from the ancient canons, but not the less receiving an additional sanction from his authority. Some of his regulations, which appear to have been original, are such as men of High-church principles would, even in modern times, deem infringements of spiritual independence; that no legend of doubtful authority should be read in the churches, but only the canonical books, and that no saint should be honored whom the whole Church did not acknowledge. These were not passed in a synod of bishops, but enjoined by the sole authority of the emperor, who seems to have arrogated a legislative power over the Church which he did not possess in temporal affairs. Many of his other laws relating to the ecclesiastical constitution are enacted in a general council of the lay nobility as well as

of prelates, and are so blended with those of a secular nature, that the two orders may appear to have equally consented to the whole. His father Pepin, indeed, left a remarkable precedent in a council held in 744, where the Nicene faith is declared to be established, and even a particular heresy condemned, with the consent of the bishops and nobles. But whatever share we may imagine the laity in general to have had in such matters, Charlemagne himself did not consider even theological decisions as beyond his province; and, in more than one instance, manifested a determination not to surrender his own judgment, even in questions of that nature, to any ecclesiastical authority.

§ 7. It is highly probable, indeed, that an ambitious hierarchy did not endure without reluctance this imperial supremacy of Charlemagne, though it was not expedient for them to resist a prince so formidable, and from whom they had so much to expect. But their dissatisfaction at a scheme of government incompatible with their own objects of perfect independence produced a violent recoil under Louis the Debonair, who attempted to act the censor of ecclesiastical abuses with as much earnestness as his father, though with very inferior qualifications for so delicate an undertaking. The bishops, accordingly, were among the chief instigators of those numerous revolts of his children which harassed this emperor. They set, upon one occasion, the first example of an usurpation which was to become very dangerous to society—the deposition of sovereigns by ecclesiastical authority. Louis, a prisoner in the hands of his enemies, had been intimidated enough to undergo a public penance; and the bishops pretended that, according to a canon of the Church, he was incapable of returning afterwards to a secular life or preserving the character of sovereignty. Circumstances enabled him to retain the empire in defiance of this sentence; but the Church had tasted the pleasure of trampling upon crowned heads, and was eager to repeat the experiment. Under the disjointed and feeble administration of his posterity in their several kingdoms, the bishops availed themselves of more than one opportunity to exalt their temporal power. Those weak Carlovingian princes, in their mutual animosities, encouraged the pretensions of a common enemy. Thus Charles the Bald and Louis of Bavaria, having driven their brother Lothaire from his dominions, held an assembly of some bishops, who adjudged him unworthy to reign, and, after exacting a promise from the two allied brothers to govern better than he had done, permitted and

commanded them to divide his territories. After concurring in this unprecedented encroachment, Charles the Bald had little right to complain when, some years afterwards, an assembly of bishops declared himself to have forfeited his crown, released his subjects from their allegiance, and transferred his kingdom to Louis of Bavaria. But, in truth, he did not pretend to deny the principle which he had contributed to maintain. Even in his own behalf he did not appeal to the rights of sovereigns, and of the nation whom they represent. "No one," says this degenerate grandson of Charlemagne, "ought to have degraded me from the throne to which I was consecrated, until at least I had been heard and judged by the bishops, through whose ministry I was consecrated, who are called the thrones of God, in which God sitteth, and by whom he dispenses his judgments; to whose paternal chastisement I was willing to submit, and do still submit myself."

These passages are very remarkable, and afford a decisive proof that the power obtained by national churches, through the superstitious prejudices then received, and a train of favorable circumstances, was as dangerous to civil government as the subsequent usurpations of the Roman pontiff, against which Protestant writers are apt too exclusively to direct their animadversions. Voltaire, I think, has remarked that the ninth century was the age of the bishops, as the eleventh and twelfth were of the popes. It seemed as if Europe was about to pass under as absolute a domination of the hierarchy as had been exercised by the priesthood of ancient Egypt or the Druids of Gaul. Thus the Bishop of Winchester, presiding as papal legate at an assembly of the clergy in 1141, during the civil war of Stephen and Matilda, asserted the right of electing a king of England to appertain principally to that order; and by virtue of this unprecedented claim, raised Matilda to the throne. England, indeed, has been obsequious, beyond most other countries, to the arrogance of her hierarchy, especially during the Anglo-Saxon period, when the nation was sunk in ignorance and effeminate superstition. Every one knows the story of King Edwy in some form or other, though I believe it impossible to ascertain the real circumstances of that controverted anecdote. But, upon the supposition least favorable to the king, the behavior of Archbishop Odo and Dunstan was an intolerable outrage of spiritual tyranny.[*]

[*] Catholic writers, for the most part, contend that Elgiva was the mistress and not the wife of Edwy: but it is impossible with the extant evidence to arrive at any certain conclusion upon the subject. What is manifest alone is, that a young king was persecuted and dethroned by the insolence of monkery exciting a superstitious people against him.

§ 8. But, while the prelates of these nations, each within his respective sphere, were prosecuting their system of encroachment upon the laity, a new scheme was secretly forming within the bosom of the Church, to inthrall both that and the temporal governments of the world under an ecclesiastical monarch. Long before the earliest epoch that can be fixed for *modern* history, and, indeed, to speak fairly, almost as far back as ecclesiastical testimonies can carry us, the bishops of Rome had been venerated as first in rank among the rulers of the Church. The nature of this primacy is doubtless a very controverted subject. It is, however, reduced by some moderate Catholics to little more than a precedency attached to the See of Rome in consequence of its foundation by the chief of the apostles, as well as the dignity of the imperial city. A sort of general superintendence was admitted as an attribute of this primacy, so that the bishops of Rome were entitled, and indeed bound, to remonstrate, when any error or irregularity came to their knowledge, especially in the Western churches, a greater part of which had been planted by them, and were connected, as it were by filiation, with the common capital of the Roman Empire and of Christendom. Various causes had a tendency to prevent the bishops of Rome from augmenting their authority in the East, and even to diminish that which they had occasionally exercised; the institution of patriarchs at Antioch, Alexandria, and afterwards at Constantinople, with extensive rights of jurisdiction; the difference of rituals and discipline; but, above all, the many disgusts taken by the Greeks, which ultimately produced an irreparable schism between the two churches in the ninth century. But within the pale of the Latin Church every succeeding age enhanced the power and dignity of the Roman See. By the constitution of the Church, such at least as it became in the fourth century, its divisions being arranged in conformity to those of the Empire, every province ought to have its metropolitan, and every vicariate its ecclesiastical exarch or primate. The Bishop of Rome presided, in the latter capacity, over the Roman vicariate, comprehending Southern Italy, and the three chief Mediterranean islands. But as it happened, none of the ten provinces forming this division had any metropolitan; so that the popes exercised all metropolitical functions within them, such as the consecration of bishops, the convocation of synods, the ultimate decision of appeals, and many other sorts of authority. These provinces are sometimes called the Roman patriarchate, the bishops of Rome having always

been reckoned one, generally indeed the first, of the patriarchs; each of whom was at the head of all the metropolitans within its limits, but without exercising those privileges which by the ecclesiastical constitution appertained to the latter. Though the Roman patriarchate, properly so called, was comparatively very small in extent, it gave its chief, for the reason mentioned, advantages in point of authority which the others did not possess.

I may perhaps appear to have noticed circumstances interesting only to ecclesiastical scholars. But it is important to apprehend this distinction of the patriarchate from the primacy of Rome, because it was by extending the boundaries of the former, and by applying the maxims of her administration in the south of Italy to all the Western churches, that she accomplished the first object of her scheme of usurpation, in subverting the provincial system of government under the metropolitans. Their first encroachment of this kind was in the province of Illyricum, which they annexed in a manner to their own patriarchate, by not permitting any bishops to be consecrated without their consent.[1] This was before the end of the fourth century. Their subsequent advances were, however, very gradual. About the middle of the sixth century we find them confirming the elections of archbishops of Milan. They came by degrees to exercise, though not always successfully, and seldom without opposition, an appellant jurisdiction over the causes of bishops deposed or censured in provincial synods. But, upon the whole, the papal authority had made no decisive progress in France, or perhaps anywhere beyond Italy, till the pontificate of Gregory I. (A.D. 590–604).

§ 9. This celebrated person was not distinguished by learning, which he affected to depreciate, nor by his literary performances, which the best critics consider as below mediocrity, but by qualities more necessary for his purpose, intrepid ambition and unceasing activity. He maintained a perpetual correspondence with the emperors and their ministers, with the sovereigns of the Western kingdoms, with all the hierarchy of the Catholic Church—employing, as occasion dictated, the language of devotion, arrogance, or adulation. Claims hitherto disputed, or half preferred, assumed under his hands a more definite form; and nations too ignorant to compare precedents or discriminate principles yielded to assertions confidently made by the authority which they most

[1] The ecclesiastical province of Illyricum included Macedonia. Siricius, the author of this encroachment, seems to have been one of the first usurpers.

respected. Gregory dwelt more than his predecessors upon the power of the keys, exclusively, or at least principally, committed to St. Peter, which had been supposed in earlier times, as it is now by the Gallican Catholics, to be inherent in the general body of bishops, joint sharers of one indivisible episcopacy. And thus the patriarchal rights, being manifestly of mere ecclesiastical institution, were artfully confounded, or, as it were, merged, in the more paramount supremacy of the papal chair. From the time of Gregory the popes appear in a great measure to have thrown away that scaffolding, and relied in preference on the pious veneration of the people, and on the opportunities which might occur for enforcing their dominion with the pretense of divine authority.

§ 10. It can not, I think, be said that any material acquisitions of ecclesiastical power were obtained by the successors of Gregory for nearly 150 years. As none of them possessed vigor and reputation equal to his own, it might even appear that the papal influence was retrograde. But in effect the principles which supported it were taking deeper root, and acquiring strength by occasional, though not very frequent, exercise. Appeals to the pope were sometimes made by prelates dissatisfied with a local sentence. National councils were still provoked by princes, and canons enacted under their authority by the bishops who attended. The Church of France, and even that of England, planted as the latter had been by Gregory, continued to preserve a tolerable measure of independence. The first striking infringement of this was made through the influence of an Englishman, Winfrid, better known as St. Boniface, the apostle of Germany. Having undertaken the conversion of Thuringia, and other still heathen countries, he applied to the pope for a commission, and was consecrated bishop without any determinate see. Upon this occasion he took an oath of obedience, and became ever afterwards a zealous upholder of the apostolical chair. His success in the conversion of Germany was great, his reputation eminent, which enabled him to effect a material revolution in ecclesiastical government. At a synod of the French and German bishops, held at Frankfort in 742 by Boniface as legate of Pope Zachary, it was enacted that, as a token of their willing subjection to the See of Rome, all metropolitans should request the pallium at the hands of the pope, and obey his lawful commands. This was construed by the popes to mean a promise of obedience before receiving the pall, which was changed in after times by Gregory VII. into an oath of fealty.

§ 11. This *Council of Frankfort* claims a leading place as an epoch in the history of the papacy. I shall but just glance at the subsequent political revolutions of that period; the invasion of Italy by Pepin, his donation of the exarchate to the Holy See, the conquest of Lombardy by Charlemagne, the patriarchate of Rome conferred upon both these princes, and the revival of the Western Empire in the person of the latter. These events had a natural tendency to exalt the papal supremacy, which it is needless to indicate. But a circumstance of a very different nature contributed to this in a still greater degree. About the conclusion of the eighth century there appeared, under the name of one Isidore, an unknown person, a collection of ecclesiastical canons, now commonly denominated the *False Decretals*. These purported to be rescripts or decrees of the early bishops of Rome; and their effect was to diminish the authority of metropolitans over their suffragans, by establishing an appellant jurisdiction of the Roman See in all causes, and by forbidding national councils to be holden without its consent. Every bishop, according to the decretals of Isidore, was amenable only to the immediate tribunal of the pope; by which one of the most ancient rights of the provincial synod was abrogated. Every accused person might not only appeal from an inferior sentence, but remove an unfinished process before the supreme pontiff. New sees were not to be erected, nor bishops translated from one see to another, nor their resignations accepted, without the sanction of the pope. They were still, indeed, to be consecrated by the metropolitan, but in the pope's name. It has been plausibly suspected that these decretals were forged by some bishop in jealousy or resentment; and their general reception may at least be partly ascribed to such sentiments. The archbishops were exceedingly powerful, and might often abuse their superiority over inferior prelates; but the whole episcopal aristocracy had abundant reason to lament their acquiescence in a system of which the metropolitans were but the earliest victims. Upon these spurious decretals was built the great fabric of papal supremacy over the different national churches—a fabric which has stood after its foundation crumbled beneath it; for no one has pretended to deny, for the last two centuries, that the imposture is too palpable for any but the most ignorant ages to credit.

§ 12. The Gallican Church made for some time a spirited though unavailing struggle against this rising despotism. In the reign of Charles the Bald a bold defender of ecclesiastical independence was found in Hincmar, archbishop of

Rheims, the most distinguished statesman of his age. Equal in ambition, and almost in public estimation, to any pontiff, he sometimes came off successfully in his contentions with Rome. But time is fatal to the unanimity of coalitions; the French bishops were accessible to superstitious prejudice, to corrupt influence, to mutual jealousy. Above all, they were conscious that a persuasion of the pope's omnipotence had taken hold of the laity. Though they complained loudly, and invoked, like patriots of a dying state, names and principles of a freedom that was no more, they submitted almost in every instance to the continual usurpations of the Holy See. One of those which most annoyed their aristocracy was the concession to monasteries of exemption from episcopal authority. These had been very uncommon till about the eighth century, after which they were studiously multiplied. It was naturally a favorite object with the abbots; and sovereigns, in those ages of blind veneration for monastic establishments, were pleased to see their own foundations rendered, as it would seem, more respectable by privileges of independence. The popes had a closer interest in granting exemptions, which attached to them the regular clergy, and lowered the dignity of the bishops. In the eleventh and twelfth centuries whole orders of monks were declared exempt at a single stroke; and the abuse began to awaken loud complaints, though it did not fail to be aggravated afterwards.

§ 13. The principles of ecclesiastical supremacy were readily applied by the popes to support still more insolent usurpations. Chiefs by divine commission of the whole Church, every earthly sovereign must be subject to their interference. The first instance where the Roman pontiffs actually tried the force of their arms against a sovereign was the excommunication of Lothaire, king of Lorraine, and grandson of Louis the Debonair. This prince had repudiated his wife, upon unjust pretexts, but with the approbation of a national council, and had subsequently married his concubine. Nicholas I., the actual pope, dispatched two legates to investigate this business, and decide according to the canons. They hold a council at Metz, and confirm the divorce and marriage. Enraged at this conduct of his ambassadors, the pope summons a council at Rome, annuls the sentence, deposes the archbishops of Treves and Cologne, and directs the king to discard his mistress. After some shuffling on the part of Lothaire he is excommunicated; and in a short time we find both the king and his prelates, who had begun with expressions of passionate contempt towards the pope, suing humbly for abso-

lution at the feet of Adrian II., successor of Nicholas, which was not granted without difficulty.

Excommunication, whatever opinions may be entertained as to its religious efficacy, was originally nothing more in appearance than the exercise of a right which every society claims, the expulsion of refractory members from its body. No direct temporal disadvantages attended this penalty for several ages; but, as it was the most severe of spiritual censures, and tended to exclude the object of it not only from a participation in religious rites, but in a considerable degree from the intercourse of Christian society, it was used sparingly and upon the gravest occasions. Gradually, as the Church became more powerful and more imperious, excommunications were issued upon every provocation, rather as a weapon of ecclesiastical warfare than with any regard to its original intention. Princes who felt the inadequacy of their own laws to secure obedience called in the assistance of more formidable sanctions. Several capitularies of Charlemagne denounce the penalty of excommunication against incendiaries or deserters from the army. Charles the Bald procured similar censures against his revolted vassals. Thus the boundary between temporal and spiritual offenses grew every day less distinct; and the clergy were encouraged to fresh encroachments as they discovered the secret of rendering them successful.

The civil magistrate ought, undoubtedly, to protect the just rights and lawful jurisdiction of the Church. It is not so evident that he should attach temporal penalties to her censures. Excommunication has never carried such a presumption of moral turpitude as to disable a man, upon any solid principles, from the usual privileges of society. Superstition and tyranny, however, decided otherwise. The support due to Church censures by temporal judges is vaguely declared in the capitularies of Pepin and Charlemagne. It became in later ages a more established principle in France and England, and, I presume, in other countries. By our common law, an excommunicated person is incapable of being a witness or of bringing an action, and he may be detained in prison until he obtains absolution. By the Establishments of St. Louis, his estate or person might be attached by the magistrate. These actual penalties were attended by marks of abhorrence and ignominy still more calculated to make an impression on ordinary minds. They were to be shunned like men infected with leprosy, by their servants, their friends, and their families. Two attendants only, if we

may trust a current history, remained with Robert, king of France, who, on account of an irregular marriage, was put to this ban by Gregory V., and these threw all the meats which had passed his table into the fire. Indeed, the mere intercourse with a prescribed person incurred what is called the lesser excommunication, or privation of the sacraments, and required penitence and absolution. In some places a bier was set before the door of an excommunicated individual, and stones thrown at his windows: a singular method of compelling his submission! Everywhere the excommunicated were debarred of a regular sepulture, which, though obviously a matter of police, has, through the superstition of consecrating burial-grounds, been treated as belonging to ecclesiastical control.

§ 14. But as excommunication, which attacked only one, and perhaps a hardened sinner, was not always efficacious, the Church had recourse to a more comprehensive punishment. For the offense of a nobleman she put a county, for that of a prince his entire kingdom, under an *Interdict* or suspension of religious offices. No stretch of her tyranny was, perhaps, so outrageous as this. During an interdict the churches were closed, the bells silent, the dead unburied, no rite but those of baptism and extreme unction performed. The penalty fell upon those who had neither partaken nor could have prevented the offense; and the offense was often but a private dispute, in which the pride of a pope or bishop had been wounded. Interdicts were so rare before the time of Gregory VII., that some have referred them to him as their author; instances may, however, be found of an earlier date, and especially that which accompanied the above-mentioned excommunication of Robert, king of France. They were afterwards issued not unfrequently against kingdoms; but in particular districts they continually occurred.

This was the mainspring of the machinery that the clergy set in motion, the lever by which they moved the world. From the moment that these interdicts and excommunications had been tried the powers of the earth might be said to have existed only by sufferance. Nor was the validity of such denunciations supposed to depend upon their justice. The imposer, indeed, of an unjust excommunication was guilty of a sin; but the party subjected to it had no remedy but submission. The received theory of religion concerning the indispensable obligation and mysterious efficacy of the rites of communion and confession must have induced scrupulous minds to make any temporal sacrifice rather than incur their

privation. One is rather surprised at the instances of failure than of success in the employment of these spiritual weapons against sovereigns or the laity in general. It was, perhaps, a fortunate circumstance for Europe that they were not introduced upon a large scale during the darkest ages of superstition. In the eighth or ninth centuries they would probably have met with a more implicit obedience.

§ 15. So high did the popes carry their pretensions, that John VIII. (A.D. 872–882) asserted very plainly a right of choosing the emperor, and seems indirectly to have exercised it in the election of Charles the Bald, who had not primogeniture in his favor. This prince, whose restless ambition was united with meanness as well as insincerity, consented to sign a capitulation, on his coronation at Rome, in favor of the pope and Church, a precedent which was improved upon in subsequent ages. Rome was now prepared to rivet her fetters upon sovereigns, and at no period have the condition of society and the circumstances of civil government been so favorable for her ambition. But the consummation was still suspended, and even her progress arrested, for more than 150 years. This dreary interval is filled up, in the annals of the papacy, by a series of revolutions and crimes. Six popes were deposed, two murdered, one mutilated. Frequently two or even three competitors, among whom it is not always possible by any genuine criticism to distinguish the true shepherd, drove each other alternately from the city. A few respectable names appear thinly scattered through this darkness; and sometimes, perhaps, a pope who had acquired estimation by his private virtues may be distinguished by some encroachment on the rights of princes or the privileges of national churches. But in general the pontiffs of that age had neither leisure nor capacity to perfect the great system of temporal supremacy, and looked rather to a vile profit from the sale of episcopal confirmations, or of exemptions to monasteries.

The corruption of the head extended naturally to all other members of the Church. All writers concur in stigmatizing the dissoluteness and neglect of decency that prevailed among the clergy. The bishops, indeed, who were to enforce them had most occasion to dread their severity. They were obtruded upon their sees, as the supreme pontiffs were upon that of Rome, by force or corruption. A child of five years old was made Archbishop of Rheims. The See of Narbonne was purchased for another at the age of ten. By this relaxation of morals the priesthood began to lose its hold upon

the prejudices of mankind. These are nourished chiefly, indeed, by shining examples of piety and virtue, but also, in a superstitious age, by ascetic observances, by the fasting and watching of monks and hermits. The regular clergy accordingly, or monastic orders, retained at all times a far greater portion of respect than ordinary priests, though degenerated themselves, as was admitted, from their primitive strictness.

§ 16. Two crimes, or at least violations of ecclesiastical law, had become almost universal in the eleventh century, and excited general indignation—the marriage or concubinage of priests, and the sale of benefices. Celibacy had been, from very early times, enjoined as an obligation upon the clergy. It was perhaps permitted that those already married for the first time and to a virgin, might receive ordination; and this, after prevailing for a length of time in the Greek Church, was sanctioned by the Council of Trullo, in 691,[8] and has ever since continued one of the distinguishing features of its discipline. The Latin Church, however, did not receive these canons, and has uniformly persevered in excluding the three orders of priests, deacons, and subdeacons, not only from contracting matrimony, but from cohabiting with wives espoused before their ordination. The prohibition, however, during some ages existed only in the letter of her canons. In every country the secular or parochial clergy kept women in their houses, upon more or less acknowledged terms of intercourse, by a connivance of their ecclesiastical superiors, which almost amounted to a positive toleration. The sons of priests were capable of inheriting by the law of France and also of Castile. Some vigorous efforts had been made in England by Dunstan, with the assistance of King Edgar, to dispossess the married canons, if not the parochial clergy, of their benefices; but the abuse, if such it is to be considered, made incessant progress till the middle of the eleventh century. There was certainly much reason for the rulers of the Church to restore this part of their discipline, since it is by cutting off her members from the charities of domestic life that she secures their entire affection to her cause, and renders them, like veteran soldiers, independent of every feeling but that of fidelity to their commander and regard to the interests of their body. Leo IX. accord-

[8] This council was held at Constantinople in the dome of the palace, called Trullus by the Latins. The nominative Trullo, though solecistical, is used by ecclesiastical writers in English. Bishops are not within this permission, and can not retain their wives by the discipline of the Greek Church.

ingly, one of the first pontiffs who retrieved the honor of the apostolic chair, after its long period of ignominy, began in good earnest the difficult work of enforcing celibacy among the clergy. His successors never lost sight of this essential point of discipline. It was a struggle against the natural rights and strongest affections of mankind, which lasted for several ages, and succeeded only by the toleration of greater evils than those it was intended to remove. The laity, in general, took part against the married priests, who were reduced to infamy and want, or obliged to renounce their dearest connections. In many parts of Germany no ministers were left to perform divine services. But perhaps there was no country where the rules of celibacy met with so little attention as in England. It was acknowledged in the reign of Henry I. that the greater and better part of the clergy were married, and that prince is said to have permitted them to retain their wives.[9] But the hierarchy never relaxed in their efforts; and all the councils, general or provincial, of the twelfth century, utter denunciations against *concubinary* priests. After that age we do not find them so frequently mentioned; and the abuse by degrees, though not suppressed, was reduced within limits at which the Church might connive.

§ 17. Simony, or the corrupt purchase of spiritual benefices, was the second characteristic reproach of the clergy in the eleventh century. The measures taken to repress it deserve particular consideration, as they produced effects of the highest importance in the history of the Middle Ages. According to the primitive custom of the Church, an episcopal vacancy was filled up by election of the clergy and people belonging to the city or diocese. The subject of their choice was, after the establishment of the federate or provincial system, to be approved or rejected by the metropolitan and his suffrages; and, if approved, he was consecrated by them. It is probable that, in almost every case, the clergy took a leading part in the selection of their bishops; but the consent of the laity was absolutely necessary to render it valid. They were, however, by degrees excluded from any real participation, first in the Greek, and finally in the Western Church. But this was not effected till pretty late times; the people fully preserved their elective rights at Milan in the eleventh cen-

[9] Giraldus Cambrensis, about the end of Henry II.'s reign (*apud* Wright's "Political Songs of England," p. 353), mentions the marriage of the parochial clergy as almost universal. They were called *focariæ*, as living at the same hearth, on pretense of service; but the fellowship, we perceive, was not confined to the fireside.

tury, and traces of their concurrence may be found both in France and Germany in the next age.

It does not appear that the early Christian emperors interposed with the freedom of choice any further than to make their own confirmation necessary in the great patriarchal sees, such as Rome and Constantinople, which were frequently the objects of violent competition, and to decide in controverted elections. The Gothic and Lombard kings of Italy followed the same line of conduct. But in the French monarchy a more extensive authority was assumed by the sovereign. Though the practice was subject to some variation, it may be said generally that the Merovingian kings, the line of Charlemagne, and the German emperors of the house of Saxony, conferred bishoprics either by direct nomination, or, as was more regular, by recommendatory letters to the electors. In England, also, before the conquest, bishops were appointed in the witenagemot; and even in the reign of William it is said that Lanfranc was raised to the See of Canterbury by consent of Parliament. But, independently of this prerogative, which length of time and the tacit sanction of the people have rendered unquestionably legitimate, the sovereign had other means of controlling the election of a bishop. Those estates and honors which compose the temporalities of the see, and without which the naked spiritual privileges would not have tempted an avaricious generation, had chiefly been granted by former kings, and were assimilated to lands held on a beneficiary tenure. As they seemed to partake of the nature of fiefs, they required similar formalities—investiture by the lord, and an oath of fealty by the tenant. Charlemagne is said to have introduced this practice; and, by way of visible symbol, as usual in feudal institutions, to have put the ring and crosier into the hands of the newly consecrated bishop. And this continued for more than two centuries afterwards without exciting any scandal or resistance.

The Church has undoubtedly surrendered part of her independence in return for ample endowments and temporal power; nor could any claim be more reasonable than that of feudal superiors to grant the investiture of dependent fiefs. But the fairest right may be sullied by abuse; and the sovereigns, the lay-patrons, the prelates of the tenth and eleventh centuries, made their powers of nomination and investiture subservient to the grossest rapacity. According to the ancient canons, a benefice was avoided by any simoniacal payment or stipulation. If these were to be enforced,

the Church must almost be cleared of its ministers. Either through bribery in places where elections still prevailed, or through corrupt agreements with princes, or at least customary presents to their wives and ministers, a large proportion of the bishops had no valid tenure in their sees. The case was perhaps worse with inferior clerks; in the Church of Milan, which was notorious for this corruption, not a single ecclesiastic could stand the test, the archbishop exacting a price for the collation of every benefice.

§ 18. The bishops of Rome, like those of inferior sees, were regularly elected by the citizens, laymen as well as ecclesiastics. But their consecration was deferred until the popular choice had received the sovereign's sanction. The Romans regularly dispatched letters to Constantinople or to the exarchs of Ravenna, praying that their election of a pope might be confirmed. Exceptions, if any, are infrequent while Rome was subject to the Eastern Empire. This, among other imperial prerogatives, Charlemagne might consider as his own. He possessed the city, especially after his coronation as emperor, in full sovereignty; and even before that event had investigated, as supreme chief, some accusations preferred against the Pope Leo III. No vacancy of the papacy took place after Charlemagne became emperor; and it must be confessed, that in the first which happened under Louis the Debonair, Stephen IV. was consecrated in haste, without that prince's approbation. But Gregory IV., his successor, waited till his election had been confirmed, and, upon the whole, the Carlovingian emperors, though less uniformly than their predecessors, retained that mark of sovereignty. But during the disorderly state of Italy which followed the last reigns of Charlemagne's posterity, while the sovereignty and even the name of an emperor were in abeyance, the supreme dignity of Christendom was conferred only by the factious rabble of its capital. Otho the great, in receiving the imperial crown, took upon him the prerogatives of Charlemagne. There is even extant a decree of Leo VIII., which grants to him and his successors the right of naming future popes. But the authenticity of this instrument is denied by the Italians. It does not appear that the Saxon emperors went to such a length as nomination, except in one instance (that of Gregory V., in 996); but they sometimes, not uniformly, confirmed the election of a pope, according to ancient custom. An explicit right of nomination was, however, conceded to the Emperor Henry III., in 1047, as the only means of rescuing the Roman Church from the disgrace and depravity into which

it had fallen. Henry appointed two or three very good popes; acting in this against the warnings of a selfish policy, as fatal experience soon proved to his family.

This high prerogative was perhaps not designed to extend beyond Henry himself. But, even if it had been transmissible to his successors, the infancy of his son, Henry IV., and the factions of that minority, precluded the possibility of its exercise. Nicholas II., in 1059, published a decree which restored the right of election to the Romans, but with a remarkable variation from the original form. The cardinal bishops (seven in number, holding sees in the neighborhood of Rome, and consequently suffragans of the pope as patriarch or metropolitan) were to choose the supreme pontiff, with the concurrence first of the cardinal priests and deacons (or ministers of the parish churches of Rome), and afterwards of the laity. Thus elected, the new pope was to be presented for confirmation to Henry, "now king, and hereafter to become emperor," and to such of his successors as should personally obtain that privilege. This decree is the foundation of that celebrated mode of election in a conclave of cardinals which has ever since determined the headship of the Church. It was intended not only to exclude the citizens, who had, indeed, justly forfeited their primitive right, but as far as possible to prepare the way for an absolute emancipation of the papacy from the imperial control; reserving only a precarious and personal concession to the emperors instead of their ancient legal prerogative of confirmation.

The real author of this decree, and of all other vigorous measures adopted by the popes of that age, whether for the assertion of their independence or the restoration of discipline, was Hildebrand, archdeacon of the Church of Rome, by far the most conspicuous person of the eleventh century. Acquiring by his extraordinary qualities an unbounded ascendency over the Italian clergy, they regarded him as their chosen leader and the hope of their common cause. He had been empowered singly to nominate a pope on the part of the Romans after the death of Leo IX., and compelled Henry III. to acquiesce in his choice of Victor II. No man could proceed more fearlessly towards his object than Hildebrand, nor with less attention to conscientious impediments. Though the decree of Nicholas II., his own work, had expressly reserved the right of confirmation of the young king of Germany, yet on the death of that pope Hildebrand procured the election and consecration of Alexander II., without waiting for any authority. During this pontificate he was con

sidered as something greater than the pope, who acted entirely by his counsels. On Alexander's decease, Hildebrand, long since the real head of the Church, was raised with enthusiasm to its chief dignity, and assumed the name of Gregory VII. (A.D. 1073).

§ 19. Notwithstanding the late precedent at the election of Alexander II., it appears that Gregory did not yet consider his plans sufficiently mature to throw off the yoke altogether, but declined to receive consecration until he had obtained the consent of the King of Germany. This moderation was not of long continuance. The situation of Germany speedily afforded him an opportunity of displaying his ambitious views. Henry IV., through a very bad education, was arbitrary and dissolute; the Saxons were engaged in a desperate rebellion; and secret disaffection had spread among the princes to an extent of which the pope was much better aware than the king. He began by excommunicating some of Henry's ministers on pretense of simony, and made it a ground of remonstrance that they were not instantly dismissed. His next step was to publish a decree, or rather to renew one, of Alexander II., against lay investitures. The abolition of these was a favorite object of Gregory, and formed an essential part of his general scheme for emancipating the spiritual and subjugating the temporal power. The ring and crosier, it was asserted by the papal advocates, were the emblems of that power which no monarch could bestow. Though the estates of bishops might, strictly, be of temporal right, yet, as they had been inseparably annexed to their spiritual office, it became just that what was first in dignity and importance should carry with it those accessory parts.

The contest about investitures, though begun by Gregory VII., did not occupy a very prominent place during his pontificate, its interest being suspended by other more extraordinary and important dissensions between the Church and Empire. The pope, after tampering some time with the disaffected party in Germany, summoned Henry to appear at Rome and vindicate himself from the charges alleged by his subjects. Such an outrage naturally exasperated a young and passionate monarch. Assembling a number of bishops and other vassals at Worms, he procured a sentence that Gregory should no longer be obeyed as lawful pope. But the time was past for those arbitrary encroachments, or at least high prerogatives, of former emperors. The relations of dependency between Church and State were now about to be reversed. Gregory had no sooner received accounts

of the proceedings at Worms than he summoned a council in the Lateran palace, and by a solemn sentence not only excommunicated Henry, but deprived him of the kingdoms of Germany and Italy, releasing his subjects from their allegiance, and forbidding them to obey him as sovereign. Thus Gregory VII. obtained the glory of leaving all his predecessors behind, and astonishing mankind by an act of audacity and ambition which the most emulous of his successors could hardly surpass.[10]

The first impulses of Henry's mind on hearing this denunciation were indignation and resentment. But, like other inexperienced and misguided sovereigns, he had formed an erroneous calculation of his own resources. A conspiracy, long prepared, of which the dukes of Suabia and Carinthia were the chiefs, began to manifest itself. Some were alienated by his vices, and others jealous of his family. The rebellious Saxons took courage; the bishops, intimidated by excommunications, withdrew from his side, and he suddenly found himself almost insulated in the midst of his dominions. In this desertion he had recourse, through panic, to a miserable expedient. He crossed the Alps with the avowed determination of submitting, and seeking absolution from the pope. Gregory was at Canossa, a fortress near Reggio, belonging to his faithful adherent, the Countess Matilda. It was in a winter of unusual severity. The emperor was admitted, without his guards, into an outer court of the castle, and three successive days remained from morning till evening in a woollen shirt and with naked feet, while Gregory, shut up with the countess, refused to admit him to his presence. On the fourth day he obtained absolution; but only on condition of appearing on a certain day to learn the pope's decision whether or no he should be restored to his kingdom, until which time he promised not to assume the ensigns of royalty (A.D. 1077).

This base humiliation, instead of conciliating Henry's adversaries, forfeited the attachment of his friends. In his contest with the pope he had found a zealous support in the

[10] The sentence of Gregory VII. against the Emperor Henry was directed, we should always remember, to persons already well disposed to reject his authority. Men are glad to be told that it is their duty to resist a sovereign against whom they are in rebellion, and will not be very scrupulous in examining conclusions which fall in with their inclinations and interests. Allegiance was in those turbulent ages easily thrown off, and the right of resistance was in continual exercise. To the Germans of the eleventh century a prince unfit for Christian communion would easily appear unfit to reign over them; and though Henry had not given much real provocation to the pope, his vices and tyranny might seem to challenge any spiritual censure or temporal chastisement.

principal Lombard cities, among whom the married and simoniacal clergy had great influence. Indignant at his submission to Gregory, whom they affected to consider as an usurper of the papal chair, they now closed their gates against the emperor, and spoke openly of deposing him. In this singular position between opposite dangers, Henry retrod his late steps, and broke off his treaty with the pope; preferring, if he must fall, to fall as the defender rather than the betrayer of his imperial rights. The rebellious princes of Germany chose another king, Rodolph, duke of Suabia, on whom Gregory, after some delay, bestowed the crown, with a Latin verse importing that it was given by virtue of the original commission of St. Peter. But the success of this pontiff in his immediate designs was not answerable to his intrepidity. Henry both subdued the German rebellion, and carried on the war with so much vigor, or rather so little resistance, in Italy, that he was crowned in Rome by the antipope Guibert, whom he had raised in a council of his partisans to the government of the Church instead of Gregory. The latter found an asylum under the protection of Roger Guiscard at Salerno, where he died an exile. His mantle, however, descended upon his successors. But Henry V. being stronger in the support of his German vassals than his father had been, none of the popes with whom he was engaged had the boldness to repeat the measures of Gregory VII. At length, each party grown weary of this ruinous contention, a treaty was agreed upon between the emperor and Calixtus II., which put an end by compromise to the question of ecclesiastical investitures (A.D. 1122). By this compact the emperor resigned forever all pretense to invest bishops by the ring and crosier, and recognized the liberty of elections. But in return it was agreed that elections should be made in his presence or that of his officers, and that the new bishop should receive his temporalities from the emperor by the sceptre.

Both parties in the concordat at Worms receded from so much of their pretensions, that we might almost hesitate to determine which is to be considered as victorious. On the one hand, in restoring the freedom of episcopal elections the emperors lost a prerogative of very long standing, and almost necessary to the maintenance of authority over not the least turbulent part of their subjects. And though the form of investiture by the ring and crosier seemed in itself of no importance, yet it had been in effect a collateral security against the election of obnoxious persons. For the em-

perors, detaining this necessary part of the pontificals until they should confer investiture, prevented a hasty consecration of the new bishop, after which, the vacancy being legally filled, it would not be decent for them to withhold the temporalities. But then, on the other hand, they preserved by the concordat their feudal sovereignty over the estates of the Church, in defiance of the language which had recently been held by its rulers. It is evident that a general immunity from feudal obligations for an order who possessed nearly half the lands in Europe struck at the root of those institutions by which the fabric of society was principally held together. This complete independency had been the aim of Gregory's disciples; and by yielding to the continuance of lay investitures in any shape Calixtus may, in this point of view, appear to have relinquished the principal object of contention.

The emperors were not the only sovereigns whose practice of investiture excited the hostility of Rome, although they sustained the principal brunt of the war. A similar contest broke out under the pontificate of Paschal II. with Henry I. of England; for the circumstances of which, as they contain nothing peculiar, I refer to our own historians. It is remarkable that it ended in a compromise not unlike that adjusted at Worms; the king renouncing all sorts of investitures, while the pope consented that the bishop should do homage for his temporalities. This was exactly the custom of France, where investiture by the ring and crosier is said not to have prevailed; and it answered the main end of sovereigns by keeping up the feudal dependency of ecclesiastical estates. But the kings of Castile were more fortunate than the rest; discreetly yielding to the pride of Rome, they obtained what was essential to their own authority, and have always possessed, by the concession of Urban II., an absolute privilege of nomination to bishoprics in their dominions. An early evidence of that indifference of the popes towards the real independence of national churches to which subsequent ages were to lend abundant confirmation.

§ 20. When the emperors had surrendered their pretensions to interfere in episcopal elections, the primitive mode of collecting the suffrages of clergy and laity in conjunction, or at least of the clergy with the laity's assent and ratification, ought naturally to have revived. But in the twelfth century neither the people, nor even the general body of the diocesan clergy, were considered as worthy to exercise this function. It soon devolved altogether upon the chapters of

cathedral churches. The original of these may be traced very high. In the earliest ages we find a college of presbytery consisting of the priests and deacons, assistants as a council of advice, or even a kind of parliament, to their bishops. Parochial divisions, and fixed ministers attached to them, were not established till a later period. But the canons, or cathedral clergy, acquired afterwards a more distinct character. They were subjected by degrees to certain strict observances, little differing, in fact, from those imposed on monastic orders. They lived at a common table, they slept in a common dormitory, their dress and diet were regulated by peculiar laws. But they were distinguished from monks by the right of possessing individual property, which was afterwards extended to the enjoyment of separate prebends or benefices. These strict regulations, chiefly imposed by Louis the Debonair, went into disuse through relaxation of discipline; nor were they ever effectually restored. Meantime the chapters became extremely rich, and as they monopolized the privilege of electing bishops, it became an object of ambition with noble families to obtain canonries for their younger children as the surest road to ecclesiastical honors and opulence. Contrary, therefore, to the general policy of the Church, persons of inferior birth have been rigidly excluded from these foundations.

§ 21. The object of Gregory VII., in attempting to redress those more flagrant abuses which for two centuries had deformed the face of the Latin Church, is not incapable, perhaps, of vindication, though no sufficient apology can be offered for the means he employed. But the disinterested love of reformation, to which candor might ascribe the contention against investitures, is belied by the general tenor of his conduct, exhibiting an arrogance without parallel, and an ambition that grasped at universal and unlimited monarchy. He may be called the common enemy of all sovereigns, whose dignity as well as independence mortified his infatuated pride. Thus we find him menacing Philip I. of France, who had connived at the pillage of some Italian merchants and pilgrims, not only with an interdict, but a sentence of deposition. Thus, too, he asserts, as a known historical fact, that the kingdom of Spain had formerly belonged, by special right, to St. Peter; and by virtue of this imprescriptible claim he grants to a certain Count de Rouci all territories which he should reconquer from the Moors, to be held in fief from the Holy See by a stipulated rent. A similar pretension he makes to the kingdom of Hungary, and bitterly

reproaches its sovereign, Solomon, who had done homage to the emperor, in derogation of St. Peter, his legitimate lord. It was convenient to treat this apostle as a great feudal suzerain, and the legal principles of that age were dexterously applied to rivet more forcibly the fetters of superstition.

While temporal sovereigns were opposing so inadequate a resistance to a system of usurpation contrary to all precedent and to the common principles of society, it was not to be expected that national churches should persevere in opposing pretensions for which several ages had paved the way. Gregory VII. completed the destruction of their liberties. The principles contained in the decretals of Isidore, hostile as they were to ecclesiastical independence, were set aside as insufficient to establish the absolute monarchy of Rome. By a constitution of Alexander II., during whose pontificate Hildebrand himself was deemed the effectual pope, no bishop in the Catholic Church was permitted to exercise his functions until he had received the confirmation of the Holy See: a provision of vast importance, through which, beyond perhaps any other means, Rome has sustained, and still sustains, her temporal influence, as well as her ecclesiastical supremacy. The national churches, long abridged of their liberties by gradual encroachments, now found themselves subject to an undisguised and irresistible despotism. Instead of affording protection to bishops against their metropolitans, under an insidious pretense of which the popes of the ninth century had subverted the authority of the latter, it became the favorite policy of their successors to harass all prelates with citations to Rome. Gregory obliged the metropolitans to attend in person for the pallium. Bishops were summoned even from England and the Northern kingdoms to receive the commands of the spiritual monarch. William the Conqueror having made a difficulty about permitting his prelates to obey these citations, Gregory, though in general on good terms with that prince, and treating him with a deference which marks the effect of a firm character in repressing the ebullitions of overbearing pride, complains of this as a persecution unheard of among pagans. The great quarrel between Archbishop Anselm and his two sovereigns, William Rufus and Henry I., was originally founded upon a similar refusal to permit his departure for Rome.

§ 22. This perpetual control exercised by the popes over ecclesiastical, and in some degree over temporal affairs, was maintained by means of their legates, at once the ambassadors and the lieutenants of the Holy See. Previously to the

latter part of the tenth age these had been sent not frequently and upon special occasions. The legatine or vicarial commission had generally been intrusted to some eminent metropolitan of the nation within which it was to be exercised; as the Archbishop of Canterbury was perpetual legate in England. But the special commissioners, or legates *a latere*, suspending the pope's ordinary vicars, took upon themselves an unbounded authority over the national churches, holding councils, promulgating canons, deposing the bishops, and issuing interdicts at their discretion. They lived in splendor at the expense of the bishops of the province. This was the more galling to the hierarchy, because simple deacons were often invested with this dignity, which set them above primates. As the sovereigns of France and England acquired more courage, they considerably abridged this prerogative of the Holy See, and resisted the entrance of any legates into their dominions without their consent.

From the time of Gregory VII. no pontiff thought of awaiting the confirmation of the emperor, as in earlier ages, before he was installed in the throne of St. Peter. On the contrary, it was pretended that the emperor was himself to be confirmed by the pope. This had, indeed, been broached by John VIII. two hundred years before Gregory. It was still a doctrine not calculated for general reception; but the popes availed themselves of every opportunity which the temporizing policy, the negligence or bigotry of sovereigns threw into their hands. Lothaire coming to receive the imperial crown at Rome, this circumstance was commemorated by a picture in the Lateran palace, in which, and in two Latin verses subscribed, he was represented as doing homage to the pope. When Frederick Barbarossa came upon the same occasion, he omitted to hold the stirrup of Adrian IV., who, in his turn, refused to give him the usual kiss of peace; nor was the contest ended but by the emperor's acquiescence, who was content to follow the precedents of his predecessors. The same Adrian, expostulating with Frederick upon some slight grievance, reminded him of the imperial crown which he had conferred, and declared his willingness to bestow, if possible, still greater benefits. But the phrase employed (majora beneficia) suggested the idea of a fief; and the general insolence which pervaded Adrian's letter confirming this interpretation, a ferment arose among the German princes, in a congress of whom this letter was delivered. "From whom, then," one of the legates was rash enough to say, "does the emperor hold his crown, except from the

pope?" which so irritated a prince of Wittelsbach that he was with difficulty prevented from cleaving the priest's head with his sabre. Adrian IV. was the only Englishman that ever sat in the papal chair. It might, perhaps, pass for a favor bestowed on his natural sovereign, when he granted to Henry II. the kingdom of Ireland; yet the language of this donation, wherein he asserts all islands to be the exclusive property of St. Peter, should not have had a very pleasing sound to an insular monarch.

§ 23. I shall not wait to comment on the support given to Becket by Alexander III., which must be familiar to the English reader, nor on his speedy canonization; a reward which the Church has always held out to its most active friends, and which may be compared to titles of nobility granted by a temporal sovereign. But the epoch when the spirit of papal usurpation was most strikingly displayed was the pontificate of Innocent III. (A.D. 1198–1216). In each of the three leading objects which Rome has pursued—independent sovereignty, supremacy over the Christian Church, control over the princes of the earth—it was the fortune of this pontiff to conquer. He realized, as we have seen in another place, that fond hope of so many of his predecessors, a dominion over Rome and the central parts of Italy. During his pontificate Constantinople was taken by the Latins; and however much he might seem to regret a diversion of the Crusaders which impeded the recovery of the Holy Land, he exulted in the obedience of the new patriarch, and the reunion of the Greek Church. Never, perhaps, either before or since, was the great Eastern schism in so fair a way of being healed; even the kings of Bulgaria and of Armenia acknowledged the supremacy of Innocent, and permitted his interference with their ecclesiastical institutions.

The maxims of Gregory VII. were now matured by more than a hundred years, and the right of trampling upon the necks of kings had been received, at least among Churchmen, as an inherent attribute of the papacy. "As the sun and the moon are placed in the firmament" (such is the language of Innocent), "the greater as the light of the day, and the lesser of the night, thus are there two powers in the Church—the pontifical, which, as having the charge of souls, is the greater; and the royal, which is the less, and to which the bodies of men only are intrusted." Intoxicated with these conceptions (if we may apply such a word to *successful* ambition), he thought no quarrel of princes beyond the sphere of his jurisdiction. On every side the thunder of

Rome broke over the heads of princes. A certain Swero is excommunicated for usurping the crown of Norway. A legate, in passing through Hungary, is detained by the king: Innocent writes in tolerably mild terms to this potentate, but fails not to intimate that he might be compelled to prevent his son's accession to the throne. The King of Leon had married his cousin, a princess of Castile. Innocent subjects the kingdom to an interdict. The king gave way, and sent back his wife. But a more illustrious victory of the same kind was obtained over Philip Augustus, who, having repudiated Isemburga of Denmark, had contracted another marriage. The conduct of the king, though not without the usual excuse of those times, nearness of blood, was justly condemned; and Innocent did not hesitate to visit his sins upon the people by a general interdict. This, after a short demur from some bishops, was enforced throughout France; the dead lay unburied, and the living were cut off from the offices of religion, till Philip, thus subdued, took back his divorced wife. The submission of such a prince, not feebly superstitious, like his predecessor Robert, nor vexed with seditions, like the Emperor Henry IV., but brave, firm, and victorious, is perhaps the proudest trophy in the scutcheon of Rome. Compared with this, the subsequent triumph of Innocent over our pusillanimous John seems cheaply gained, though the surrender of a powerful kingdom into the vassalage of the pope may strike us as a proof of stupendous baseness on one side, and audacity on the other.[11]

I have mentioned already that among the new pretensions advanced by the Roman See was that of confirming the election of an emperor. It had, however, been asserted rather incidentally than in a peremptory manner. But the doubtful elections of Philip and Otho after the death of Henry VI. gave Innocent III. an opportunity of maintaining more positively this pretended right. In a decretal epistle addressed to the Duke of Zahringen, the object of which is to direct him to transfer his allegiance from Philip to the other competitor, Innocent, after stating the mode in which a regular election ought to be made, declares the pope's immediate authority to examine, confirm, anoint, crown, and consecrate

[11] The stipulated annual payment of 1000 marks was seldom made by the kings of England; but one is almost ashamed that it should ever have been so. Henry III. paid it occasionally when he had any object to attain, and even Edward I. for some years: the latest payment on record is in the seventeenth of his reign. After a long discontinuance, it was demanded in the fortieth of Edward III. (1366), but the Parliament unanimously declared that John had no right to subject the kingdom to a superior without their consent: which put an end forever to the applications.

the elect emperor, provided he shall be worthy; or to reject him if rendered unfit by great crimes, such as sacrilege, heresy, perjury, or persecution of the Church; in default of election, to supply the vacancy; or, in the event of equal suffrages, to bestow the empire upon any person at his discretion. The princes of Germany were not much influenced by this hardy assumption, which manifests the temper of Innocent III. and of his court, rather than their power. But Otho IV., at his coronation by the pope, signed a capitulation, which cut off several privileges enjoyed by the emperors, ever since the concordat of Calixtus, in respect of episcopal elections and investitures.

PART II.

§ 1. Continual Progress of the Papacy. § 2. Canon Law. § 3. Mendicant Orders. § 4. Dispensing Power. § 5. Encroachments on Rights of Patronage, Mandats, Reserves, etc. § 6. Taxation of the Clergy. § 7. General Disaffection towards the See of Rome in the Thirteenth Century. § 8. Progress of Ecclesiastical Jurisdiction. § 9. Immunity of the Clergy in Criminal Cases. § 10. Restraints imposed upon their Jurisdiction. § 11. Upon their Acquisition of Property. § 12. Boniface VIII. His Quarrel with Philip the Fair. Its Termination. § 13. Gradual Decline of Papal Authority. Removal of the Papal Court to Avignon. § 14. Louis of Bavaria. § 15. Conduct of Avignon Popes. § 16. Return to Rome. Contested Election of Urban and Clement produces the great Schism. § 17. Councils of Pisa and Constance. § 18. Council of Basle. § 19. Methods adopted to restrain the Papal Usurpations in England, Germany, and France. Liberties of the Gallican Church. § 20. Decline of the Papal Influence in Italy.

§ 1. THE noonday of papal dominion extends from the pontificate of Innocent III., inclusively, to that of Boniface VIII.; or, in other words, through the thirteenth century. Rome inspired during this age all the terror of her ancient name. She was once more the mistress of the world, and kings were her vassals. I have already anticipated the two most conspicuous instances when her temporal ambition displayed itself, both of which are inseparable from the civil history of Italy.[1] In the first of these, her long contention with the house of Suabia, she finally triumphed. After his deposition by the Council of Lyons, the affairs of Frederick II. went rapidly into decay. With every allowance for the enmity of the Lombards and the jealousies of Germany, it must be confessed that his proscription by Innocent IV. and Alexander IV. was the main cause of the ruin of his family. There is, however, no other instance, to the best of my judgment, where the pretended right of deposing kings has been success-

[1] See above, chapter iii.

fully exercised. Martin IV. absolved the subjects of Peter of Aragon from their allegiance, and transferred his crown to a prince of France; but they did not cease to obey their lawful sovereign. This is the second instance which the thirteenth century presents of interference on the part of the popes in a great temporal quarrel. As feudal lords of Naples and Sicily, they had, indeed, some pretext for engaging in the hostilities between the houses of Anjou and Aragon, as well as for their contest with Frederick II. But the pontiffs of that age, improving upon the system of Innocent III., and sanguine with past success, aspired to render every European kingdom formally dependent upon the See of Rome. Thus Boniface VIII., at the instigation of some emissaries from Scotland, claimed that monarchy as paramount lord, and interposed, though vainly, the sacred panoply of ecclesiastical rights to rescue it from the arms of Edward I.

§ 2. This general supremacy effected by the Roman Church over mankind, in the twelfth and thirteenth centuries, derived material support from the promulgation of the canon law. The foundation of this jurisprudence is laid in the decrees of councils, and in the rescripts or decretal epistles of popes to questions propounded upon emergent doubts relative to matters of discipline and ecclesiastical economy. As the jurisdiction of the spiritual tribunals increased and extended to a variety of persons and causes, it became almost necessary to establish a uniform system for the regulation of their decisions. After several minor compilations had appeared, Gratian, an Italian monk, published, about the year 1140, his *Decretum*, or general collection of canons, papal epistles, and sentences of fathers, arranged and digested into titles and chapters, in imitation of the Pandects, which very little before had begun to be studied again with great diligence. This work of Gratian, though it seems rather an extraordinary performance for the age when it appeared, has been censured for notorious incorrectness as well as inconsistency, and especially for the authority given in it to the false decretals of Isidore, and, consequently, to the papal supremacy. It fell, however, short of what was required in the progress of that usurpation. Gregory IX. caused the five books of *Decretals* to be published by Raimond de Pennafort, in 1234. These consist almost entirely of rescripts issued by the later popes, especially Alexander III., Innocent III., Honorius III., and Gregory himself. They form the most essential part of the canon law —the Decretum of Gratian being comparatively obsolete. In these books we find a regular and copious system of juris-

prudence, derived, in a great measure, from the civil law, but with considerable deviation, and possibly improvement. Boniface VIII. added a sixth part, thence called the *Sext*, itself divided into five books, in the nature of a supplement to the other five, of which it follows the arrangement, and composed of decisions promulgated since the pontificate of Gregory IX. New constitutions were subjoined by Clement V. and John XXII., under the name of *Clementines* and *Extravagantes Johannis;* and a few more of later pontiffs are included in the body of canon law, arranged as a second supplement, after the manner of the Sext, and called *Extravagantes Communes.*

The study of this code became, of course, obligatory upon ecclesiastical judges. It produced a new class of legal practitioners, or canonists, of whom a great number added, like their brethren, the civilians, their illustrations and commentaries, for which the obscurity and discordance of many passages, more especially in the Decretum, gave ample scope. From the general analogy of the canon law to that of Justinian, the two systems became, in a remarkable manner, collateral and mutually intertwined—the tribunals governed by either of them borrowing their rules of decision from the other in cases where their peculiar jurisprudence is silent or of dubious interpretation. But the canon law was almost entirely founded upon the legislative authority of the pope; the decretals are, in fact, but a new arrangement of the bold epistles of the most usurping pontiffs, and especially of Innocent III., with titles, or rubrics, comprehending the substance of each in the compiler's language. The superiority of ecclesiastical to temporal power, or at least the absolute independence of the former, may be considered as a sort of key-note which regulates every passage in the canon law. It is expressly declared that subjects owe no allegiance to an excommunicated lord, if after admonition he is not reconciled to the Church. And the rubric prefixed to the declaration of Frederick II.'s deposition in the Council of Lyons, asserts that the pope may dethrone the emperor for lawful causes. These rubrics to the decretals are not, perhaps, of direct authority as part of the law; but they express its sense, so as to be fairly cited instead of it. By means of her new jurisprudence, Rome acquired in every country a powerful body of advocates, who, though many of them were laymen, would, with the usual bigotry of lawyers, defend every pretension or abuse to which their received standard of authority gave sanction.

§ 3. Next to the canon law, I should reckon the institution of the mendicant orders among those circumstances which principally contributed to the aggrandizement of Rome. By the acquisition, and in some respects the enjoyment, or at least ostentation, of immense riches, the ancient monastic orders had forfeited much of the public esteem. Austere principles as to the obligation of evangelical poverty were inculcated by the numerous sectaries of that age, and eagerly received by the people, already much alienated from an established hierarchy. No means appeared so efficacious to counteract this effect as the institution of religious societies strictly debarred from the insidious temptations of wealth. Upon this principle were founded the orders of mendicant friars, incapable, by the rules of their foundation, of possessing estates, and maintained only by alms and pious remunerations. Of these the two most celebrated were formed by St. Dominick and St. Francis of Assisi, and established by the authority of Honorius III. in 1216 and 1223. These great reformers, who have produced so extraordinary an effect upon mankind, were of very different characters; the one, active and ferocious, had taken a prominent part in the crusade against the unfortunate Albigeois, and was among the first who bore the terrible name of inquisitor; while the other, a harmless enthusiast, pious and sincere, but hardly of sane mind, was much rather accessory to the intellectual than to the moral degradation of his species. Various other mendicant orders were instituted in the thirteenth century; but most of them were soon suppressed, and, besides the two principal, none remain but the Augustin and the Carmelite.

These new preachers were received with astonishing approbation by the laity, whose religious zeal usually depends a good deal upon their opinion of sincerity and disinterestedness in their pastors. And the progress of the Dominican and Franciscan friars in the thirteenth century bears a remarkable analogy to that of our English Methodists. Not deviating from the faith of the Church, but professing rather to teach it in greater purity, and to observe her ordinances with greater regularity, while they imputed supineness and corruption to the secular clergy, they drew round their sermons a multitude of such listeners as in all ages are attracted by similar means. They practised all the stratagems of itinerancy, preaching in public streets, and administering the communion on a portable altar. Thirty years after their institution an historian complains that the parish churches

were deserted, that none confessed except to these friars—in short, that the regular discipline was subverted. This uncontrolled privilege of performing sacerdotal functions, which their modern anti-types assume for themselves, was conceded to the mendicant orders by the favor of Rome. Aware of the powerful support they might receive in turn, the pontiffs of the thirteenth century accumulated benefits upon the disciples of Francis and Dominick. They were exempted from episcopal authority; they were permitted to preach or hear confessions without leave of the ordinary, to accept of legacies, and to inter in their churches. Such privileges could not be granted without resistance from the other clergy; the bishops remonstrated, the University of Paris maintained a strenuous opposition; but their reluctance served only to protract the final decision. Boniface VIII. appears to have peremptorily established the privileges and immunities of the mendicant orders in 1295.

It was naturally to be expected that the objects of such extensive favors would repay their benefactors by a more than usual obsequiousness and alacrity in their service. Accordingly, the Dominicans and Franciscans vied with each other in magnifying the papal supremacy. Many of these monks became eminent in canon law and scholastic theology. The great lawgiver of the schools, Thomas Aquinas, whose opinions the Dominicans especially treat as almost infallible, went into the exaggerated principles of his age in favor of the See of Rome. And as the professors of those sciences took nearly all the learning and logic of the times to their own share, it was hardly possible to repel their arguments by any direct reasoning. But this partiality of the new monastic orders to the popes must chiefly be understood to apply to the thirteenth century, circumstances occurring in the next which gave in some degree a different complexion to their dispositions in respect of the Holy See.

§ 4. We should not overlook, among the causes that contributed to the dominion of the popes, their prerogative of dispensing with ecclesiastical ordinances. The most remarkable exercise of this was as to the canonical impediments of matrimony. Such strictness as is prescribed by the Christian religion with respect to divorce was very unpalatable to the barbarous nations. They, in fact, paid it little regard; under the Merovingian dynasty, even private men put away their wives at pleasure. In many capitularies of Charlemagne we find evidence of the prevailing license of repudiation and even polygamy. The principles which the Church

inculcated were in appearance the very reverse of this laxity; yet they led indirectly to the same effect. Marriages were forbidden, not merely within the limits which nature, or those inveterate associations which we call nature, have rendered sacred, but as far as the seventh degree of collateral consanguinity, computed from a common ancestor. Not only was affinity, or relationship by marriage, put upon the same footing as that by blood, but a fantastical connection, called spiritual affinity, was invented in order to prohibit marriage between a sponsor and godchild. A union, however innocently contracted, between parties thus circumstanced might at any time be dissolved, and their subsequent cohabitation forbidden. One readily apprehends the facilities of abuse to which all this led; and history is full of dissolutions of marriage, obtained by fickle passion or cold-hearted ambition, to which the Church has not scrupled to pander on some suggestion of relationship. It was not until the twelfth century that either these laws as to marriage or any other established rules of discipline were supposed liable to arbitrary dispensation; at least the stricter Churchmen had always denied that the pope could infringe canons, nor had he asserted any right to do so. But Innocent III. laid down as a maxim, that out of the plenitude of his power he might lawfully dispense with the law; and accordingly granted, among other instances of his prerogative, dispensations from impediments of marriage to the Emperor Otho IV. Similar indulgences were given by his successors, though they did not become usual for some ages. The fourth Lateran Council, in 1215, removed a great part of the restraint, by permitting marriages beyond the fourth degree, or what we call third-cousins; and dispensations have been made more easy, when it was discovered that they might be converted into a source of profit. They served a more important purpose by rendering it necessary for the princes of Europe, who seldom could marry into one another's houses without transgressing the canonical limits, to keep on good terms with the Court of Rome, which, in several instances that have been mentioned, fulminated its censures against sovereigns who lived without permission in what was considered an incestuous union.

The dispensing power of the popes was exerted in several cases of a temporal nature, particularly in the legitimation of children, for purposes even of succession. This Innocent III. claimed as an indirect consequence of his right to remove the canonical impediment which bastardy offered to ordina-

tion; since it would be monstrous, he says, that one who is legitimate for spiritual functions should continue otherwise in any civil matter. But the most important and mischievous species of dispensations was from the observance of promissory oaths. Two principles are laid down in the decretals —that an oath disadvantageous to the Church is not binding; and that one extorted by force was of slight obligation, and might be annulled by ecclesiastical authority. As the first of these maxims gave the most unlimited privilege to the popes of breaking all faith of treaties which thwarted their interest or passion, a privilege which they continually exercised, so the second was equally convenient to princes weary of observing engagements towards their subjects or their neighbors. They protested with a bad grace against the absolution of their people from allegiance by an authority to which they did not scruple to repair in order to bolster up their own perjuries. Thus Edward I., the strenuous asserter of his temporal rights, and one of the first who opposed a barrier to the encroachments of the clergy, sought at the hands of Clement V. a dispensation from his oath to observe the great statute against arbitrary taxation.

§ 5. In all the earlier stages of papal dominion the supreme head of the Church had been her guardian and protector; and this beneficent character appeared to receive its consummation in the result of that arduous struggle which restored the ancient practice of free election to ecclesiastical dignities. Not long, however, after this triumph had been obtained, the popes began by little and little to interfere with the regular constitution. Their first step was conformable, indeed, to the prevailing system of spiritual independency. By the concordat of Calixtus it appears that the decision of contested elections was reserved to the emperor, assisted by the metropolitan and suffragans. But it was consonant to the prejudices of that age to deem the supreme pontiff a more natural judge, as in other cases of appeal. The point was early settled in England, where a doubtful election to the archbishopric of York, under Stephen, was referred to Rome, and there kept five years in litigation. Otho IV. surrendered this, among other rights of the empire, to Innocent III. by his capitulation; and from that pontificate the papal jurisdiction over such controversies became thoroughly recognized. But the real aim of Innocent, and perhaps of some of his predecessors, was to dispose of bishoprics, under pretext of determining contests, as a matter of patronage. So many rules were established, so

many formalities required by their constitutions, incorporated afterwards into the canon law, that the Court of Rome might easily find means of annulling what had been done by the chapter, and bestowing the see on a favorite candidate. The popes soon assumed not only a right of decision, but of devolution; that is, of supplying the want of election, or the unfitness of the elected, by a nomination of their own. Thus Archbishop Langton, if not absolutely nominated, was at least chosen in an invalid and compulsory manner by the order of Innocent III., as we may read in our English historians. And several succeeding archbishops of Canterbury equally owed their promotion to the papal prerogative. Some instances of the same kind occurred in Germany, and it became the constant practice in Naples.

While the popes were thus artfully depriving the chapters of their right of election to bishoprics, they interfered in a more arbitrary manner with the collation of inferior benefices. This began, though in so insensible a manner as to deserve no notice but for its consequences, with Adrian IV., who requested some bishops to confer the next benefice that should become vacant on a particular clerk. Alexander III. used to solicit similar favors. These recommendatory letters were called *Mandats*. But though such requests grew more frequent than was acceptable to patrons, they were preferred in moderate language, and could not decently be refused to the apostolic chair. But, as we find in the history of all usurping governments, time changes anomaly into system, and injury into right; examples beget custom, and custom ripens into law; and the doubtful precedent of one generation becomes the fundamental maxim of another. No country was so intolerably treated by the popes as England throughout the ignominious reign of Henry III. Her Church seemed to have been so richly endowed only as the free pasture of Italian priests, who were placed, by the mandatory letters of Gregory IX. and Innocent IV., in all the best benefices. If we may trust a solemn remonstrance in the name of the whole nation, they drew from England, in the middle of the thirteenth century, sixty or seventy thousand marks every year—a sum far exceeding the royal revenue. This was asserted by the English envoys at the Council of Lyons. But the remedy was not to be sought in remonstrances to the Court of Rome, which exulted in the success of its encroachments. There was no defect of spirit in the nation to oppose a more adequate resistance; but the weak-minded individual upon the throne sacrificed the public interest some-

times through habitual timidity, sometimes through silly ambition. If England, however, suffered more remarkably, yet other countries were far from being untouched. A German writer about the beginning of the fourteenth century mentions a cathedral where, out of about thirty-five vacancies of prebends that had occurred within twenty years, the regular patron had filled only two. The case was not very different in France, where the continual usurpations of the popes produced the celebrated Pragmatic Sanction of St. Louis (A.D. 1268). This edict contains three important provisions; namely, that all prelates and other patrons shall enjoy their full rights as to the collation of benefices, according to the canons; that churches shall possess freely their rights of election; and that no tax or pecuniary exaction shall be levied by the pope, without consent of the king and of the national Church. We do not find, however, that the French Government acted up to the spirit of this ordinance; and the Holy See continued to invade the rights of collation with less ceremony than they had hitherto used. Clement IV. published a bull in 1266, which, after asserting an absolute prerogative of the supreme pontiff to dispose of all preferments, whether vacant or in reversion, confines itself in the enacting words to the reservation of such benefices as belong to persons dying at Rome (vacantes in curia). These had for some time been reckoned as a part of the pope's special patronage; and their number, when all causes of importance were drawn to his tribunal, when metropolitans were compelled to seek their pallium in person, and even, by a recent constitution, exempt abbots were to repair to Rome for confirmation, not to mention the multitude who flocked thither as mere courtiers and hunters after promotion, must have been very considerable. Boniface VIII. repeated this law of Clement IV. in a still more positive tone; and Clement V. laid down as a maxim, that the pope might freely bestow, as universal patron, all ecclesiastical benefices. In order to render these tenable by their Italian courtiers, the canons against pluralities and non-residence were dispensed with; so that individuals were said to have accumulated fifty or sixty preferments. It was a consequence from this extravagant principle, that the pope might prevent the ordinary collator upon a vacancy; and, as this could seldom be done with sufficient expedition in places remote from his court, that he might make reversionary grants during the life of an incumbent, or reserve certain benefices specifically for his own nomination.

§ 6. The persons as well as estates of ecclesiastics were secure from arbitrary taxation in all kingdoms founded upon the ruins of the empire, both by the common liberties of freemen, and more particularly by their own immunities and the horror of sacrilege. Such, at least, was their legal security, whatever violence might occasionally be practised by tyrannical princes. But this exemption was compensated by annual donatives, probably to a large amount, which the bishops and monasteries were accustomed, and as it were compelled, to make to their sovereigns. They were subject also, generally speaking, to the feudal services and prestations. Henry I. is said to have extorted a sum of money from the English Church. But the first eminent instance of a general tax required from the clergy was the famous Saladine tithe—a tenth of all movable estate, imposed by the kings of France and England upon all their subjects, with the consent of their great councils of prelates and barons, to defray the expense of their intended crusade. Yet even this contribution, though called for by the imminent peril of the Holy Land after the capture of Jerusalem, was not paid without reluctance; the clergy doubtless anticipating the future extension of such a precedent. Many years had not elapsed when a new demand was made upon them, but from a different quarter. Innocent III. (the name continually recurs when we trace the commencement of an usurpation) imposed in 1199 upon the whole Church a tribute of one-fortieth of movable estate, to be paid to his own collectors; but strictly pledging himself that the money should only be applied to the purposes of a crusade. This crusade ended, as is well known, in the capture of Constantinople. But the word had lost much of its original meaning; or rather, that meaning had been extended by ambition and bigotry. Gregory IX. preached a crusade against the Emperor Frederick, in a quarrel which only concerned his temporal principality; and the Church of England was taxed, by his authority, to carry on this holy war. After some opposition the bishops submitted, and from that time no bounds were set to the rapacity of papal exactions. The usurers of Cahors and Lombardy, residing in London, took up the trade of agency for the pope; and in a few years he is said, partly by levies of money, partly by the revenues of benefices, to have plundered the kingdom of 950,000 marks; a sum equivalent, perhaps, to not less than fifteen millions sterling at present. Henry III.'s pusillanimity would not permit any effectual measures to be adopted; and indeed he sometimes shared in the booty, and was indulged

with the produce of taxes imposed upon his own clergy to defray the cost of his projected war against Sicily. A nobler example was set by the kingdom of Scotland: Clement IV. having, in 1267, granted the tithes of its ecclesiastical revenues for one of his mock crusades, King Alexander III., with the concurrence of the Church, stood up against this encroachment, and refused the legate permission to enter his dominions.

§ 7. These gross invasions of ecclesiastical property, however submissively endured, produced a very general disaffection towards the Court of Rome. Pillaged upon every slight pretense, without law and without redress, the clergy came to regard their once paternal monarch as an arbitrary oppressor. All writers of the thirteenth and following centuries complain in terms of unmeasured indignation, and seem almost ready to reform the general abuses of the Church. They distinguished, however, clearly enough between the abuses which oppressed them and those which it was their interest to preserve, nor had the least intention of waiving their own immunities and authority. But the laity came to more universal conclusions. A spirit of inveterate hatred grew up among them, not only towards the papal tyranny, but the whole system of ecclesiastical independence. The rich envied and longed to plunder the estates of the superior clergy; the poor learned from the Waldenses and other sectaries to deem such opulence incompatible with the character of evangelical ministers. The itinerant minstrels invented tales to satirize vicious priests, which a predisposed multitude eagerly swallowed. If the thirteenth century was an age of more extravagant ecclesiastical pretensions than any which had preceded, it was certainly one in which the disposition to resist them acquired greater consistence.

§ 8. To resist had, indeed, become strictly necessary, if the temporal governments of Christendom would occupy any better station than that of officers to the hierarchy. About the beginning of the twelfth century the ecclesiastical jurisdiction had rapidly encroached upon the secular tribunals, and seemed to threaten the usurpation of an exclusive supremacy over all persons and causes. The bishops gave the tonsure indiscriminately, in order to swell the list of their subjects. This sign of a clerical state, though below the lowest of their seven degrees of ordination, implying no spiritual office, conferred the privileges and immunities of the profession on all who wore an ecclesiastical habit and had

only once been married. Orphans and widows, the stranger and the poor, the pilgrim and the leper, under the appellation of persons in distress (miserabiles personæ), came within the peculiar cognizance and protection of the Church; nor could they be sued before any lay tribunal. And the whole body of Crusaders, or such as merely took the vow of engaging in a crusade, enjoyed the same clerical privileges.

But where the character of the litigant parties could not, even with this large construction, be brought within their pale, the bishops found a pretext for their jurisdiction in the nature of the dispute. Spiritual causes alone, it was agreed, could appertain to the spiritual tribunal. But the word was indefinite; and according to the interpreters of the twelfth century the Church was always bound to prevent and chastise the commission of sin. By this sweeping maxim, which we have seen Innocent III. apply to vindicate his control over national quarrels, the common differences of individuals, which generally involve some charge of willful injury, fell into the hands of a religious judge. One is almost surprised to find that it did not extend more universally, and might praise the moderation of the Church. Real actions, or suits relating to the property of land, were always the exclusive province of the lay court, even where a clerk was the defendant. But the ecclesiastical tribunals took cognizance of breaches of contract, at least where an oath had been pledged, and of personal trusts. They had not only an exclusive jurisdiction over questions immediately matrimonial, but a concurrent one with the civil magistrate in France, though never in England, over matters incident to the nuptial contract, as claims of marriage-portion and of dower. They took the execution of testaments into their hands, on account of the legacies to pious uses which testators were advised to bequeath. In process of time, and under favorable circumstances, they made still greater strides. They pretended a right to supply the defects, the doubts, or the negligence of temporal judges; and invented a class of mixed causes, whereof the lay or ecclesiastical jurisdiction took possession according to priority. Besides this extensive authority in civil disputes, they judged of some offenses which naturally belong to the criminal law, as well as of some others which participate of a civil and criminal nature. Such were perjury, sacrilege, usury, incest, and adultery, from the punishment of all which the secular magistrate refrained, at least in England, after they had become the province of a separate jurisdiction. Excommunication still con-

tinued the only chastisement which the Church could directly inflict. But the bishops acquired a right of having their own prisons for lay offenders, and the monasteries were the appropriate prisons of clerks. Their sentences of excommunication were enforced by the temporal magistrate by imprisonment or sequestration of effects; in some cases by confiscation or death.

§ 9. The clergy did not forget to secure along with this jurisdiction their own absolute exemption from the criminal justice of the state. This had been conceded to them by Charlemagne; and this privilege was not enjoyed by clerks in England before the Conquest; nor do we find it proved by any records long afterwards; though it seems, by what we read about the constitutions of Clarendon, to have grown into use before the reign of Henry II. About the middle of the twelfth century the principle obtained general reception, and Innocent III. decided it to be an inalienable right of the clergy, whereof they could not be divested even by their own consent. Much less were any constitutions of princes, or national usages, deemed of force to abrogate such an important privilege. These, by the canon law, were invalid when they affected the rights and liberties of Holy Church. But the spiritual courts were charged with scandalously neglecting to visit the most atrocious offenses of clerks with such punishment as they could inflict. The Church could always absolve from her own censures; and confinement in a monastery, the usual sentence upon criminals, was frequently slight and temporary. Several instances are mentioned of heinous outrages that remained nearly unpunished through the shield of ecclesiastical privilege. And as the temporal courts refused their assistance to a rival jurisdiction, the clergy had no redress for their own injuries, and even the murder of a priest, at one time, as we are told, was only punishable by excommunication.

§ 10. Such an incoherent medley of laws and magistrates, upon the symmetrical arrangement of which all social economy mainly depends, could not fail to produce a violent collision. Every sovereign was interested in vindicating the authority of the constitution which had been formed by his ancestors, or by the people whom he governed. But the first who undertook this arduous work, the first who appeared openly against ecclesiastical tyranny, was our Henry II. That king, in the constitutions of Clarendon, attempted in three respects to limit the jurisdiction assumed by the Church; asserting for his own judges the cognizance of con-

tracts, however confirmed by oath, and of rights of advowson, and also that of offenses committed by clerks, whom, as it is gently expressed, after conviction or confession the Church ought not to protect. These constitutions were the leading subject of difference between the king and Thomas à Becket. Most of them were annulled by the pope, as derogatory to ecclesiastical liberty. It is not improbable, however, that, if Louis VII. had played a more dignified part, the See of Rome, which an existing schism rendered dependent upon the favor of those two monarchs, might have receded in some measure from her pretensions. But, France implicitly giving way to the encroachments of ecclesiastical power, it became impossible for Henry completely to withstand them.

The constitutions of Clarendon, however, produced some effect, and in the reign of Henry III. more unremitted and successful efforts began to be made to maintain the independence of temporal government. The judges of the King's Court had until that time been themselves principally ecclesiastics, and consequently tender of spiritual privileges. But now, abstaining from the exercise of temporal jurisdiction, in obedience to the strict injunctions of their canons, the clergy gave place to common lawyers, professors of a system very discordant from their own. These soon began to assert the supremacy of their jurisdiction by issuing writs of prohibition whenever the ecclesiastical tribunals passed the boundaries which approved use had established. Little accustomed to such control, the proud hierarchy chafed under the bit; several provincial synods protest against the pretensions of laymen to judge the anointed ministers whom they were bound to obey; the cognizance of rights of patronage and breaches of contract is boldly asserted; but firm and cautious, favored by the nobility, though not much by the king, the judges receded not a step, and ultimately fixed a barrier which the Church was forced to respect. In the ensuing reign of Edward I., an archbishop acknowledges the abstract right of the King's Bench to issue prohibitions; and the statute entitled *Circumspectè agatis*,[3] in the thirteenth year of that prince, while by its mode of expression it seems designed to guarantee the actual privileges of spiritual jurisdiction, had a tendency, especially with the disposition of the judges, to preclude the assertion of some which are not therein mentioned. Neither the right of advowson nor any tem-

[3] The statute *Circumspectè agatis*, for it is acknowledged as a statute, though not drawn up in the form of one, is founded upon an answer of Edward I. to the prelates who had petitioned for some modification of prohibitions.

poral contract is specified in this act as pertaining to the Church; and accordingly the temporal courts have ever since maintained an undisputed jurisdiction over them. They succeeded also partially in preventing the impunity of crimes perpetrated by clerks. It was enacted by the statute of Westminster, in 1275, or rather a construction was put upon that act, which is obscurely worded, that clerks indicted for felony should not be delivered to their ordinary until an inquest had been taken of the matter of accusation; and, if they were found guilty, that their real and personal estate should be forfeited to the crown.

§ 11. The vast acquisitions of landed wealth made for many ages by bishops, chapters, and monasteries, began at length to excite the jealousy of sovereigns. They perceived that, although the prelates might send their stipulated proportion of vassals into the field, yet there could not be that active co-operation which the spirit of feudal tenures required, and that the national arm was palsied by the diminution of military nobles. Again, the reliefs upon succession, and similar dues upon alienation, incidental to fiefs, were entirely lost when they came into the hands of these undying corporations, to the serious injury of the feudal superior. Nor could it escape reflecting men, during the contest about investitures, that, if the Church peremptorily denied the supremacy of the state over her temporal wealth, it was but a just measure of retaliation, or rather self-defense, that the state should restrain her further acquisitions. Prohibitions of gifts in mortmain, though unknown to the lavish devotion of the new kingdoms, had been established by some of the Roman emperors to check the overgrown wealth of the hierarchy. The first attempt at a limitation of this description in modern times was made by Frederick Barbarossa, who, in 1158, enacted that no fief should be transferred, either to the Church or otherwise, without the permission of the superior lord. Louis IX. inserted a provision of the same kind in his Establishments. Castile had also laws of a similar tendency. A license from the crown is said to have been necessary in England, before the Conquest, for alienation in mortmain; but however that may be, there seems no reason to imagine that any restraint was put upon them by the common law before Magna Charta—a clause of which statute was construed to prohibit all gifts to religious houses without the consent of the lord of the fee. And by the 7th Edward I. alienations in mortmain are absolutely taken away; though the king might always exercise his prerogative of granting a

license, which was not supposed to be affected by the statute.

§ 12. It must appear, I think, to every careful inquirer that the papal authority, though manifesting outwardly more show of strength every year, had been secretly undermined, and lost a great deal of its hold upon public opinion, before the accession of Boniface VIII., in 1294, to the pontifical throne. The clergy were rendered sullen by demands of money, invasions of the legal right of patronage, and unreasonable partiality to the mendicant orders; a part of the mendicants themselves had begun to declaim against the corruptions of the papal court: while the laity, subjects alike and sovereigns, looked upon both the head and the members of the hierarchy with jealousy and dislike. Boniface, full of inordinate arrogance and ambition, and not sufficiently sensible of this gradual change in human opinion, endeavored to strain to a higher pitch the despotic pretensions of former pontiffs. As Gregory VII. appears the most usurping of mankind till we read the history of Innocent III., so Innocent III. is thrown into shade by the superior audacity of Boniface VIII. But independently of the less favorable dispositions of the public, he wanted the most essential quality for an ambitious pope—reputation for integrity. He was suspected of having procured through fraud the resignation of his predecessor, Celestine V., and his harsh treatment of that worthy man afterwards seems to justify the reproach. His actions, however, display the intoxication of supreme self-confidence. If we may credit some historians, he appeared at the Jubilee in 1300—a festival successfully instituted by himself to throw lustre around his court and fill his treasury[3]—dressed in imperial habits, with the two swords borne before him, emblems of his temporal as well as spiritual dominion over the earth.

It was not long after his elevation to the pontificate before Boniface displayed his temper. The two most powerful sovereigns of Europe, Philip the Fair and Edward I., began at the same moment to attack in a very arbitrary manner the revenues of the Church. The English clergy had, by their own voluntary grants, or at least those of the prelates in their name, paid frequent subsidies to the crown from the beginning of the reign of Henry III. They had nearly in

[3] The Jubilee was a centenary commemoration in honor of St. Peter and St. Paul, established by Boniface VIII. on the faith of an imaginary precedent a century before. The period was soon reduced to fifty years, and from thence to twenty-five, as it still continues.

effect waived the ancient exemption, and retained only the common privilege of English freemen to tax themselves in a constitutional manner. But Edward I. came upon them with demands so frequent and exorbitant, that they were compelled to take advantage of a bull issued by Boniface, forbidding them to pay any contribution to the state. The king disregarded every pretext, and seizing their goods into his hands, with other tyrannical proceedings, ultimately forced them to acquiesce in his extortion. It is remarkable that the pope appears to have been passive throughout this contest of Edward I. with his clergy. But it was far otherwise in France. Philip the Fair had imposed a tax on the ecclesiastical order without their consent, a measure perhaps unprecedented, yet not more odious than the similar exactions of the King of England. Irritated by some previous differences, the pope issued his bull known by the initial words Clericis laicos, absolutely forbidding the clergy of every kingdom to pay, under whatever pretext of voluntary grant, gift, or loan, any sort of tribute to their government, without his special permission. Though France was not particularly named, the king understood himself to be intended, and took his revenge by a prohibition to export money from the kingdom. This produced angry remonstrances on the part of Boniface; but the Gallican Church adhered so faithfully to the crown, and showed, indeed, so much willingness to be spoiled of their money, that he could not insist upon the most unreasonable propositions of his bull, and ultimately allowed that the French clergy might assist their sovereign by voluntary contributions, though not by way of tax.

For a very few years after these circumstances the pope and king of France appeared reconciled to each other; and the latter even referred his disputes with Edward I. to the arbitration of Boniface, "as a private person, Benedict of Gaeta (his proper name), and not as pontiff;" an almost nugatory precaution against his encroachment upon temporal authority. But a terrible storm broke out in the first year of the fourteenth century. A bishop of Pamiers, who had been sent as legate from Boniface with some complaint, displayed so much insolence and such disrespect towards the king, that Philip, considering him as his own subject, was provoked to put him under arrest, with the view to institute a criminal process. Boniface, incensed beyond measure at this violation of ecclesiastical and legatine privileges, published several bulls addressed to the king and clergy of France, charging the former with a variety of offenses, some

of them not at all concerning the Church, and commanding the latter to attend a council which he had summoned to meet at Rome. In one of these instruments, the genuineness of which does not seem liable to much exception, he declares in concise and clear terms that the king was subject to him in temporal as well as spiritual matters. This proposition had not hitherto been explicitly advanced, and it was now too late to advance it. Philip replied by a short letter in the rudest language, and ordered his bulls to be publicly burned at Paris. Determined, however, to show the real strength of his opposition, he summoned representatives from the three orders of his kingdom. This is commonly reckoned the first assembly of the States-General. The nobility and commons disclaimed with firmness the temporal authority of the pope, and conveyed their sentiments to Rome through letters addressed to the college of cardinals. The clergy endeavored to steer a middle course, and were reluctant to enter into an engagement not to obey the pope's summons; yet they did not hesitate unequivocally to deny his temporal jurisdiction.

The council, however, opened at Rome; and notwithstanding the king's absolute prohibition, many French prelates held themselves bound to be present. In this assembly Boniface promulgated his famous constitution, denominated *Unam sanctam*. The Church is one body, he therein declares, and has one head. Under its command are two swords, the one spiritual, the other temporal; that to be used by the supreme pontiff himself; this by kings and knights, by his license and at his will. But the lesser sword must be subject to the greater, and the temporal to the spiritual authority. He concludes by declaring the subjection of every human being to the See of Rome to be an article of necessary faith. Another bull pronounces all persons of whatever rank obliged to appear when personally cited before the audience or apostolical tribunal at Rome; "since such is our pleasure, who, by divine permission, rule the world." Finally, as the rupture of Philip grew more evidently irreconcilable, and the measures pursued by that monarch more hostile, he not only excommunicated him, but offered the crown of France to the Emperor Albert I. This arbitrary transference of kingdoms was, like many other pretensions of that age, an improvement upon the right of deposing excommunicated sovereigns. Gregory VII. would not have denied that a nation released by his authority from its allegiance must re-enter upon its original right of elect-

ing a new sovereign. But Martin IV. had assigned the crown of Aragon to Charles of Valois; the first instance, I think, of such an usurpation of power, but which was defended by the homage of Peter II., who had rendered his kingdom feudally dependent, like Naples, upon the Holy See. Albert felt no eagerness to realize the liberal promises of Boniface, who was on the point of issuing a bull absolving the subjects of Philip from their allegiance, and declaring his forfeiture, when a very unexpected circumstance interrupted all his projects.

Philip gave too much the air of a personal quarrel with Boniface to what should have been a resolute opposition to the despotism of Rome. Accordingly, in an assembly of his states at Paris, he preferred virulent charges against the pope, denying him to have been legitimately elected, imputing to him various heresies, and ultimately appealing to a general council and a lawful head of the Church. These measures were not very happily planned; and experience had always shown that Europe would not submit to change the common chief of her religion for the purposes of a single sovereign. But Philip succeeded in an attempt apparently more bold and singular. Nogaret, a minister who had taken an active share in all the proceedings against Boniface, was secretly dispatched into Italy, and, joining with some of the Colonna family, proscribed as Ghibelins, and rancorously persecuted by the pope, arrested him at Anagnia, a town in the neighborhood of Rome, to which he had gone without guards. This violent action was not, one would imagine, calculated to place the king in an advantageous light; yet it led accidentally to a favorable termination of his dispute. Boniface was soon rescued by the inhabitants of Anagnia; but rage brought on a fever which ended in his death; and the first act of his successor, Benedict XI., was to reconcile the King of France to the Holy See.

§ 13. The sensible decline of the papacy is to be dated from the pontificate of Boniface VIII., who had strained its authority to a higher pitch than any of his predecessors. There is a spell wrought by uninterrupted good-fortune, which captivates men's understandings, and persuades them, against reasoning and analogy, that violent power is immortal and irresistible. The spell is broken by the first change of success. The tacit submission of the successors of Boniface VIII. to the King of France might have been hailed by Europe as a token that their influence was beginning to abate. Imprisoned, insulted, deprived eventually of life by

the violence of Philip, a prince excommunicated, and who had gone all lengths in defying and despising the papal jurisdiction, Boniface had every claim to be avenged by the inheritors of the same spiritual dominion. When Benedict XI. rescinded the bulls of his predecessor, and admitted Philip the Fair to communion, without insisting on any concessions, he acted perhaps prudently, but gave a fatal blow to the temporal authority of Rome.

Benedict XI. lived but a few months, and his successor, Clement V., at the instigation, as is commonly supposed, of the King of France, by whose influence he had been elected, took the extraordinary step of removing the papal chair to Avignon (A.D. 1305). In this city it remained for more than seventy years; a period which Petrarch and other writers of Italy compare to that of the Babylonish captivity. The majority of the cardinals was always French, and the popes were uniformly of the same nation. Timidly dependent upon the Court of France, they neglected the interests and lost the affections of Italy. Rome, forsaken by her sovereign, nearly forgot her allegiance; what remained of papal authority in the ecclesiastical territories was exercised by cardinal legates, little to the honor or advantage of the Holy See. Yet the series of Avignon pontiffs were far from insensible to Italian politics. These occupied, on the contrary, the greater part of their attention. But engaging in them from motives too manifestly selfish, and being regarded as a sort of foreigners from birth and residence, they aggravated that unpopularity and bad reputation which from various other causes attached itself to their court.

§ 14. Though none of the supreme pontiffs after Boniface VIII. ventured upon such explicit assumptions of a general jurisdiction over sovereigns by divine right as he had made in his controversy with Philip, they maintained one memorable struggle for temporal power against the Emperor Louis, of Bavaria. His predecessor, Henry VII., whose measures, much to the alarm of the Court of Avignon, were directed towards the restoration of his imperial rights in Italy, had conferred the rank of vicar of the empire upon Matteo Visconti, lord of Milan. The popes had for some time pretended to possess that vicariate, during a vacancy of the empire; and after Henry's death insisted upon Visconti's surrender of the title. A war ensued between the pope's legate and the Visconti family. The Emperor Louis sent assistance to the latter, as heads of the Ghibelin or imperial party. This interference cost him above twenty years of trouble. John

XXII., a man as passionate and ambitious as Boniface himself, immediately published a bull in which he asserted the right of administering the empire during its vacancy (even in Germany, as it seems from the generality of his expression), as well as of deciding in a doubtful choice of the electors, to appertain to the Holy See; and commanded Louis to lay down his pretended authority until the supreme jurisdiction should determine upon his election. Louis's election had, indeed, been questionable; but that controversy was already settled in the field of Muhldorf, where he had obtained a victory over his competitor, the Duke of Austria; nor had the pope ever interfered to appease a civil war during several years that Germany had been internally distracted by the dispute. The emperor, not yielding to this peremptory order, was excommunicated; his vassals were absolved from their oath of fealty, and all treaties of alliance between him and foreign princes annulled (A.D. 1323). Germany, however, remained firm; and if Louis himself had manifested more decision of mind and uniformity in his conduct, the Court of Avignon must have signally failed in a contest from which it did not, in fact, come out very successful. But while at one time he went intemperate lengths against John XXII., publishing scandalous accusations in an assembly of the citizens of Rome, and causing a Franciscan friar to be chosen in his room, after an irregular sentence of deposition, he was always anxious to negotiate terms of accommodation, to give up his own active partisans, and to make concessions the most derogatory to his independence and dignity. From John, indeed, he had nothing to expect; but Benedict XII. would gladly have been reconciled, if he had not feared the kings of France and Naples, political adversaries of the emperor, who kept the Avignon popes in a sort of servitude. His successor, Clement VI., inherited the implacable animosity of John XXII. towards Louis, who died without obtaining the absolution he had long abjectly solicited.

§ 15. Though the want of firmness in this emperor's character gave sometimes a momentary triumph to the popes, it is evident that their authority lost ground during the continuance of this struggle. Their right of confirming imperial elections was expressly denied by a Diet held at Frankfort in 1338, which established as a fundamental principle that the imperial dignity depended upon God alone, and that whoever should be chosen by a majority of the electors became immediately both king and emperor, with all prerogatives

of that station, and did not require the approbation of the pope. This law, confirmed as it was by subsequent usage, emancipated the German Empire, which was immediately concerned in opposing the papal claims. But some who were actively engaged in these transactions took more extensive views, and assailed the whole edifice of temporal power which the Roman See had been constructing for more than two centuries. Several men of learning, among whom Dante, Ockham, and Marsilius of Padua are the most conspicuous, investigated the foundations of this superstructure, and exposed their insufficiency. Literature, too long the passive handmaid of spiritual despotism, began to assert her nobler birthright of ministering to liberty and truth. Though the writings of these opponents of Rome are not always reasoned upon very solid principles, they at least taught mankind to scrutinize what had been received with implicit respect, and prepared the way for more philosophical discussions. About this time a new class of enemies had unexpectedly risen up against the rulers of the Church. These were a part of the Franciscan order who had seceded from the main body on account of alleged deviations from the rigor of their primitive rule. Their schism was chiefly founded upon a quibble about the right of property in things consumable, which they maintained to be incompatible with the absolute poverty prescribed to them. This frivolous sophistry was united with the wildest fanaticism; and as John XXII. attempted to repress their follies by a cruel persecution, they proclaimed aloud the corruption of the Church, fixed the name of Antichrist upon the papacy, and warmly supported the Emperor Louis throughout all his contention with the Holy See.[4]

Meanwhile, the popes who sat at Avignon continued to invade with surprising rapaciousness the patronage and revenues of the Church. The mandats, or letters, directing a particular clerk to be preferred seem to have given place in a great degree to the more effectual method of appropriating benefices by reservation or provision, which was carried to an enormous extent in the fourteenth century. John XXII., the most insatiate of pontiffs, reserved to himself all the bishoprics in Christendom. Benedict XII. assumed the privilege for his own life of disposing of all benefices vacant by cession, deprivation, or translation. Clement VI. natural

[4] The schism of the rigid Franciscans or Fraticelli is one of the most singular parts of ecclesiastical history, and had a material tendency both to depress the temporal authority of the papacy and to pave the way for the Reformation.

ly thought that his title was equally good with his predecessors', and continued the same right for his own time; which soon became a permanent rule of the Roman Chancery. Hence the appointment of a prelate to a rich bishopric was generally but the first link in a chain of translation which the pope could regulate according to his interest. Another capital innovation was made by John XXII. in the establishment of the famous tax called *Annates*, or first-fruits of ecclesiastical benefices, which he imposed for his own benefit. These were one year's value, estimated according to a fixed rate in the books of the Roman Chancery, and payable to the papal collectors throughout Europe. Various other devices were invented to obtain money, which these degenerate popes, abandoning the magnificent schemes of their predecessors, were content to seek as their principal object. John XXII. is said to have accumulated an almost incredible treasure, exaggerated perhaps by the ill-will of his contemporaries; but it may be doubted whether even his avarice reflected greater dishonor on the Church than the licentious profuseness of Clement VI.

These exactions were too much encouraged by the kings of France, who participated in the plunder, or at least required a mutual assistance of the popes for their own imposts on the clergy. A manlier spirit was displayed by our ancestors. It was the boast of England to have placed the first legal barrier to the usurpations of Rome, if we except the insulated Pragmatic Sanction of St. Louis, from which the practice of succeeding ages in France entirely deviated. The English barons had, in a letter addressed to Boniface VIII., absolutely disclaimed his temporal supremacy over their crown, which he had attempted to set up by intermeddling in the quarrel of Scotland. This letter, it is remarkable, is nearly coincident in point of time with that of the French nobility; and the two combined may be considered as a joint protestation of both kingdoms, and a testimony to the general sentiment among the superior ranks of the laity. A very few years afterwards the Parliament of Carlisle wrote a strong remonstrance to Clement V. against the system of provisions and other extortions, including that of first-fruits, which it was rumored, they say, he was meditating to demand. But the Court of Avignon was not to be moved by remonstrances; and the feeble administration of Edward II. gave way to ecclesiastical usurpations at home as well as abroad. His magnanimous son took a bolder line. After complaining ineffectually to Clement VI. of the enormous

abuse which reserved almost all English benefices to the pope, and generally for the benefit of aliens, he passed, in 1350, the famous *Statute of Provisors*. This act, reciting one supposed to have been made at the Parliament of Carlisle, which, however, does not appear, and complaining in strong language of the mischief sustained through continual reservations of benefices, enacts that all elections and collations shall be free, according to law, and that, in case any provision or reservation should be made by the Court of Rome, the king should for that turn have the collation of such a benefice, if it be of ecclesiastical election or patronage. This devolution to the crown, which seems a little arbitrary, was the only remedy that could be effectual against the connivance and timidity of chapters and spiritual patrons. We can not assert that a statute so nobly planned was executed with equal steadiness. Sometimes by royal dispensation, sometimes by neglect or evasion, the papal bulls of provision were still obeyed, though fresh laws were enacted to the same effect as the former. It was found, on examination in 1367, that some clerks enjoyed more than twenty benefices by the pope's dispensation. And the Parliaments both of this and of Richard II.'s reign invariably complain of the disregard shown to the statute of provisors. This led to other measures, which I shall presently mention.

§ 16. The residence of the popes at Avignon gave very general offense to Europe, and they could not themselves avoid perceiving the disadvantage of absence from their proper diocese, the city of St. Peter, the source of all their claims to sovereign authority. But Rome, so long abandoned, offered but an inhospitable reception: Urban V. returned to Avignon, after a short experiment of the capital; and it was not till 1376 that the promise, often repeated, and long delayed, of restoring the papal chair to the metropolis of Christendom, was ultimately fulfilled by Gregory XI. His death, which happened soon afterwards, prevented, it is said, a second flight that he was preparing (A.D. 1378). This was followed by the great schism, one of the most remarkable events in ecclesiastical history. It is a difficult and by no means an interesting question to determine the validity of that contested election which distracted the Latin Church for so many years. In one fact, however, there is a common agreement, that the cardinals, of whom the majority were French, having assembled in conclave for the election of a successor to Gregory XI., were disturbed by a tumultuous populace, who demanded, with menaces, a Roman, or at least

an Italian, pope. This tumult appears to have been sufficiently violent to excuse, and in fact did produce, a considerable degree of intimidation. After some time the cardinals made choice of the Archbishop of Bari, a Neapolitan, who assumed the name of Urban VI. His election satisfied the populace, and tranquillity was restored. The cardinals announced their choice to the absent members of their college, and behaved towards Urban as their pope for several weeks. But his uncommon harshness of temper giving them offense, they withdrew to a neighboring town, and, protesting that his election had been compelled by the violence of the Roman populace, annulled the whole proceeding, and chose one of their own number, who took the pontifical name of Clement VII. Such are the leading circumstances which produced the famous schism. The two competitors shared the obedience of Europe in nearly equal proportions. Urban remained at Rome, Clement resumed the station of Avignon. To the former adhered Italy, the empire, England, and the nations of the North; the latter retained in his allegiance France, Spain, Scotland, and Sicily. Fortunately for the Church, no question of religious faith intermixed itself with this schism; nor did any other impediment to reunion exist than the obstinacy and selfishness of the contending parties. As it was impossible to come to any agreement on the original merits, there seemed to be no means of healing the wound but by the abdication of both popes and a fresh undisputed election. This was the general wish of Europe, but urged with particular zeal by the Court of France, and, above all, by the university of Paris, which esteems this period the most honorable in her annals. The cardinals, however, of neither obedience would recede so far from their party as to suspend the election of a successor upon a vacancy of the pontificate, which would have at least removed one-half of the obstacle. The Roman conclave, accordingly, placed three pontiffs successively—Boniface IX., Innocent VI., and Gregory XII.—in the seat of Urban VI.; and the cardinals at Avignon, upon the death of Clement in 1394, elected Benedict XIII. (Peter de Luna), famous for his inflexible obstinacy in prolonging the schism. He repeatedly promised to sacrifice his dignity for the sake of union. But there was no subterfuge to which this crafty pontiff had not recourse in order to avoid compliance with his word, though importuned, threatened, and even besieged in his palace at Avignon. Fatigued by his evasions, France withdrew her obedience, and the Gallican Church continued for a few years without acknowledg-

ing ny supreme head. But this step, which was rather the measure of the University of Paris than of the nation, it seemed advisable to retract; and Benedict was again obeyed, though France continued to urge his resignation. A second subtraction of obedience, or at least declaration of neutrality, was resolved upon, as preparatory to the convocation of a general council. On the other hand, those who sat at Rome displayed not less insincerity. Gregory XII. bound himself by oath, on his accession, to abdicate when it should appear necessary. But while these rivals were loading each other with the mutual reproach of schism, they drew on themselves the suspicion of at least a virtual collusion in order to retain their respective stations. At length the cardinals of both parties, wearied with so much dissimulation, deserted their masters, and summoned a general council to meet at Pisa.

§ 17. The council assembled at Pisa (1409), deposed both Gregory and Benedict, without deciding, in any respect, as to their pretensions, and elected Alexander V. by its own supreme authority. This authority, however, was not universally recognized; the schism, instead of being healed, became more desperate; for, as Spain adhered firmly to Benedict, and Gregory was not without supporters, there were now three contending pontiffs in the Church. A general council was still, however, the favorite, and indeed the sole remedy; and John XXIII., successor to Alexander V., was reluctantly prevailed upon, or perhaps trepanned, into convoking one to meet at Constance (1414). In this celebrated assembly he was himself deposed—a sentence which he incurred by that tenacious clinging to his dignity, after repeated promises to abdicate, which had already proved fatal to his competitors. The deposition of John, confessedly a legitimate pope, may strike us as an extraordinary measure. But, besides the opportunity it might afford of restoring union, the council found a pretext for this sentence in his enormous vices, which indeed they seem to have taken upon common fame, without any judicial process. The true motive, however, of their proceedings against him was a desire to make a signal display of a new system, which had rapidly gained ground, and which I may venture to call the whig principles of the Catholic Church. A great question was at issue—whether the polity of that establishment should be an absolute or an exceedingly limited monarchy. The papal tyranny, long endured, and still increasing, had excited an active spirit of reformation which the most distinguished ecclesiastics of France and other coun-

tries encouraged. They recurred, as far as their knowledge allowed, to a more primitive discipline than the canon law, and elevated the supremacy of general councils. But in the formation of these they did not scruple to introduce material innovations. The bishops have usually been considered the sole members of ecclesiastical assemblies. At Constance, however, sat and voted not only the chiefs of monasteries, but the ambassadors of all Christian princes, the deputies of universities, with a multitude of inferior theologians, and even doctors of law. These were naturally accessible to the pride of sudden elevation, which enabled them to control the strong and humiliate the lofty. In addition to this, the adversaries of the Court of Rome carried another not less important innovation. The Italian bishops, almost universally in the papal interests, were so numerous that, if suffrages had been taken by the head, their preponderance would have impeded any measures of transalpine nations towards reformation. It was determined, therefore, that the council should divide itself into four nations, the Italian, the German, the French, and the English, each with equal rights; and that, every proposition having been separately discussed, the majority of the four should prevail. This revolutionary spirit was very unacceptable to the cardinals, who submitted reluctantly, and with a determination that did not prove altogether unavailing, to save their papal monarchy by a dexterous policy. They could not, however, prevent the famous resolutions of the fourth and fifth sessions, which declare that the council has received, by Divine right, an authority to which every rank, even the papal, is obliged to submit, in matters of faith, in the extirpation of the present schism, and in the reformation of the Church, both in its head and its members; and that every person, even a pope, who shall obstinately refuse to obey that council, or any other lawfully assembled, is liable to such punishment as shall be necessary. These decrees are the great pillars of that moderate theory, with respect to the papal authority, which distinguished the Gallican Church.

The purpose for which these general councils had been required, next to that of healing the schism, was the reformation of abuses. All the rapacious exactions, all the scandalous venality of which Europe had complained, while unquestioned pontiffs ruled at Avignon, appeared light in comparison of the practices of both rivals during the schism. Tenths repeatedly levied upon the clergy, annats rigorously exacted, and enhanced by new valuations, fees annexed to the complicated formalities of the papal chancery, were the means by

which each half of the Church was compelled to reimburse its chief for the subtraction of the other's obedience. Boniface IX., one of the Roman line, whose fame is a little worse than that of his antagonists, made a gross traffic of his patronage—selling the privileges of exemption from ordinary jurisdiction, of holding benefices in commendam, and other dispensations, invented for the benefit of the Holy See. Nothing had been attempted at Pisa towards reformation. At Constance the majority were ardent and sincere; the representatives of the French, German, and English Churches met with a determined and, as we have seen, not always unsuccessful resolution to assert their ecclesiastical liberties. They appointed a committee of reformation, whose recommendations, if carried into effect, would have annihilated almost entirely that artfully constructed machinery by which Rome had absorbed so much of the revenues and patronage of the Church. But men interested in perpetuating these abuses, especially the cardinals, improved the advantages which a skillful government always enjoys in playing against a popular assembly. They availed themselves of the jealousies arising out of the division of the council into nations, which exterior political circumstances had enhanced. France, then at war with England, whose pretensions to be counted as a fourth nation she had warmly disputed, and not well-disposed towards the Emperor Sigismund, joined with the Italians against the English and German members of the council in a matter of the utmost importance—the immediate election of a pope before the articles of reformation should be finally concluded. These two nations, in return, united with the Italians to choose the Cardinal Colonna, against the advice of the French divines, who objected to any member of the sacred college. The Court of Rome were gainers in both questions. Martin V., the new pope, soon evinced his determination to elude any substantial reform. After publishing a few constitutions, tending to redress some of the abuses that had arisen during the schism, he contrived to make separate conventions with the several nations, and as soon as possible dissolved the council.

§ 18. By one of the decrees passed at Constance, another general council was to be assembled in five years, a second at the end of seven more, and from that time a similar representation of the Church was to meet every ten years. Martin V. accordingly convoked a council at Pavia, which, on account of the plague, was transferred to Siena; but nothing of importance was transacted by this assembly. That which he summoned seven years afterwards to the city of Basle had

very different results (A.D. 1433). The pope, dying before the meeting of this council, was succeeded by Eugenius IV., who, anticipating the spirit of its discussions, attempted to crush its independence in the outset, by transferring the place of session to an Italian city. No point was reckoned so material in the contest between the popes and reformers as whether a council should sit in Italy or beyond the Alps. The Council of Basle began, as it proceeded, in open enmity to the Court of Rome. Eugenius, after several years had elapsed in more or less hostile discussions, exerted his prerogative of removing the assembly to Ferrara, and from thence to Florence. For this he had a specious pretext in the negotiation, then apparently tending to a prosperous issue, for the re-union of the Greek Church; a triumph, however transitory, of which his council at Florence obtained the glory. On the other hand, the assembly at Basle, though much weakened by the defection of those who adhered to Eugenius, entered into compacts with the Bohemian insurgents more essential to the interests of the Church than any union with the Greeks, and completed the work begun at Constance by abolishing the annats, the reservations of benefices, and other abuses of papal authority. In this it received the approbation of most princes; but when, provoked by the endeavors of the pope to frustrate its decrees, it proceeded so far as to suspend and even to depose him, neither France nor Germany concurred in the sentence. Even the Council of Constance had not absolutely asserted a right of deposing a lawful pope, except in case of heresy, though their conduct towards John could not otherwise be justified. This question, indeed, of ecclesiastical public law seems to be still undecided. The fathers of Basle acted, however, with greater intrepidity than discretion, and, not perhaps sensible of the change that was taking place in public opinion, raised Amadeus, a retired duke of Savoy, to the pontifical dignity by the name of Felix V. They thus renewed the schism, and divided the obedience of the Catholic Church for a few years. The empire, however, as well as France, observed a singular and not very consistent neutrality; respecting Eugenius as a lawful pope, and the assembly at Basle as a general council. England warmly supported Eugenius, and even adhered to his council at Florence; Aragon and some countries of smaller note acknowledged Felix. But the partisans of Basle became every year weaker; and Nicolas V., the successor of Eugenius, found no great difficulty in obtaining the cession of Felix, and terminating this schism. This victory of the Court

of Rome over the Council of Basle nearly counterbalanced the disadvantageous events at Constance, and put an end to the project of fixing permanent limitations upon the head of the Church by means of general councils. Though the decree that prescribed the convocation of a council every ten years was still unrepealed, twice alone has the Catholic Church been convoked since the Council of Basle.

It is a natural subject of speculation, what would have been the effects of these universal councils, which were so popular in the fifteenth century, if the decree passed at Constance for their periodical assembly had been regularly observed. Many Catholic writers, of the moderate or Cisalpine school, have lamented their disuse, and ascribed to it that irreparable breach which the Reformation has made in the fabric of their Church. But beyond the zeal, unquestionably sincere, which animated their members, especially at Basle, for the abolition of papal abuses, there is nothing to praise in their conduct, or to regret in their cessation. The statesman who dreaded the encroachments of priests upon the civil government, the Christian who panted to see his rites and faith purified from the corruption of ages, found no hope of improvement in these councils. They took upon themselves the pretensions of the popes whom they attempted to supersede. By a decree of the fathers at Constance, all persons, including princes, who should oppose any obstacle to a journey undertaken by the Emperor Sigismund, in order to obtain the cession of Benedict, are declared excommunicated, and deprived of their dignities, whether secular or ecclesiastical. Their condemnation of Huss and Jerome of Prague, and the scandalous breach of faith which they induced Sigismund to commit on that occasion, are notorious. But perhaps it is not equally so that this celebrated assembly recognized by a solemn decree the flagitious principle which it had practised, declaring that Huss was unworthy, through his obstinate adherence to heresy, of any privilege; nor ought any faith or promise to be kept with him, by natural, divine, or human law, to the prejudice of the Catholic religion.[6] It will be easy to estimate the claims of this con-

[6] This proposition is the great disgrace of the council in the affair of Huss. But the violation of his safe-conduct being a famous event in ecclesiastical history, and which has been very much disputed with some degree of erroneous statement on both sides, it may be proper to give briefly an impartial summary. 1. Huss came to Constance with a safe-conduct of the emperor very loosely worded, and not directed to any individuals. Lenfant, t. i., p. 59. 2. This pass, however, was binding upon the emperor himself, and was so considered by him, when he remonstrated against the arrest of Huss. Id., p. 73, 83. 3. It was not binding on the council, who possessed no temporal power, but had a right to decide upon the question of heresy.

gress of theologians to our veneration, and to weigh the retrenchment of a few abuses against the formal sanction of an atrocious maxim.

§ 19. It was not, however, necessary for any government of tolerable energy to seek the reform of those abuses which affected the independence of national churches, and the integrity of their regular discipline, at the hands of a general council. Whatever difficulty there might be in overturning the principles founded on the decretals of Isidore, and sanctioned by the prescription of many centuries, the more flagrant encroachments of papal tyranny were fresh innovations, some within the actual generation, others easily to be traced up, and continually disputed. The principal European nations determined, with different degrees indeed of energy, to make a stand against the despotism of Rome. In this resistance England was not only the first engaged, but the most consistent; her free Parliament preventing, as far as the times permitted, that wavering policy to which a court is liable. We have already seen that a foundation was laid in the statute of provisors under Edward III. In the next reign many other measures tending to repress the interference of Rome were adopted, especially the great statute of præmunire, which subjects all persons bringing papal bulls for translation of bishops, and other enumerated purposes, into the kingdom to the penalties of forfeiture and perpetual imprisonment. This act received, and probably was designed to receive, a larger interpretation than its language appears to warrant. Combined with the statute of provisors, it put a stop to the pope's usurpation of patronage, which had impoverished the church and kingdom of England for nearly two centuries. Several attempts were made to overthrow these enactments; the first Parliament of Henry IV. gave a very large power to the king over the statute of provisors, enabling him even to annul it at his pleasure. This, however, does not appear in the statute-book. Henry indeed, like his predecessors, exercised rather largely his pre-

4. It is not manifest by what civil authority Huss was arrested, nor can I determine how far the imperial safe-conduct was a legal protection within the city of Constance. 5. Sigismund was persuaded to acquiesce in the capital punishment of Huss, and even to make it his own act (Lenfant, p. 409); by which he manifestly broke his engagement. 6. It is evident that in this he acted by the advice and sanction of the council, who thus became accessory to the guilt of his treachery.

The great moral to be drawn from the story of John Huss's condemnation is, that no breach of faith can be excused by our opinion of ill-desert in the party, or by a narrow interpretation of our own engagements. Every capitulation ought to be construed favorably for the weaker side. In such cases it is emphatically true that if the letter killeth, the spirit should give life.

rogative of dispensing with the law against papal provisions; a prerogative which, as to this point, was itself taken away by an act of his own, and another of his son, Henry V. But the statute always stood unrepealed; and it is a satisfactory proof of the ecclesiastical supremacy of the legislature that in the concordat made by Martin V., at the Council of Constance, with the English nation, we find no mention of reservation of benefices, of annats, and the other principal grievances of that age; our ancestors disdaining to accept by compromise with the pope any modification, or even confirmation of their statute law. They had already restrained another flagrant abuse, the increase of first-fruits by Boniface IX.; an act of Henry IV. forbidding any greater sum to be paid on that account than had been formerly accustomed.

It will appear evident to every person acquainted with the contemporary historians, and the proceedings of Parliament, that, besides partaking in the general resentment of Europe against the papal court, England was under the influence of a peculiar hostility to the clergy, arising from the dissemination of the principles of Wicliff. All ecclesiastical possessions were marked for spoliation by the system of this reformer; and the House of Commons more than once endeavored to carry it into effect, pressing Henry IV. to seize the temporalities of the Church for public exigencies. This recommendation, besides its injustice, was not likely to move Henry, whose policy had been to sustain the prelacy against their new adversaries. Ecclesiastical jurisdiction was kept in better control than formerly by the judges of common law, who, through rather a strained construction of the statute of præmunire, extended its penalties to the spiritual courts when they transgressed their limits. The privilege of clergy in criminal cases still remained; but it was acknowledged not to comprehend high treason.

Germany, as well as England, was disappointed of her hopes of general reformation by the Italian party at Constance; but she did not supply the want of the council's decrees with sufficient decision. The concordats of Aschaffenburg, in 1448, surrendered great part of the independence for which Germany had contended. The pope retained his annats, or at least a sort of tax in their place; and instead of reserving benefices arbitrarily, he obtained the positive right of collation during six alternate months of every year. Episcopal elections were freely restored to the chapters, except in case of translation, when the pope still continued to nominate; as he did also if any person, canonically unfit, were

presented to him for confirmation. Rome, for the remainder of the fifteenth century, not satisfied with the terms she had imposed, is said to have continually encroached upon the right of election. But she purchased too dearly her triumph over the weakness of Frederick III., and the Hundred Grievances of Germany, presented to Adrian VI. by the Diet of Nuremberg in 1522, manifested the working of a long-treasured resentment, that had made straight the path before the Saxon reformer.

France, dissatisfied with the abortive termination of her exertions during the schism, rejected the concordat offered by Martin V., which held out but a promise of imperfect reformation. She suffered in consequence the papal exactions for some years, till the decrees of the Council of Basle prompted her to more vigorous efforts for independence, and Charles VII. enacted the famous Pragmatic Sanction of Bourges. This has been deemed a sort of Magna Charta of the Gallican Church; for though the law was speedily abrogated, its principle has remained fixed as the basis of ecclesiastical liberties. By the Pragmatic Sanction a general council was declared superior to the pope; elections of bishops were made free from all control; mandats or grants in expectancy, and reservations of benefices, were taken away; first-fruits were abolished. This defalcation of wealth, which had now become dearer than power, could not be patiently borne at Rome. Pius II., the same Æneas Sylvius who had sold himself to oppose the Council of Basle, in whose service he had been originally distinguished, used every endeavor to procure the repeal of this ordinance. With Charles VII. he had no success; but Louis XI., partly out of blind hatred to his father's memory, partly from a delusive expectation that the pope would support the Angevin faction in Naples, repealed the Pragmatic Sanction. This may be added to other proofs that Louis XI., even according to the measures of worldly wisdom, was not a wise politician. His people judged from better feelings; the Parliament of Paris constantly refused to enregister the revocation of that favorite law, and it continued in many respects to be acted upon until the reign of Francis I. At the States-General of Tours, in 1484, the inferior clergy, seconded by the two other orders, earnestly requested that the Pragmatic Sanction might be confirmed; but the prelates were timid or corrupt, and the regent Anne was unwilling to risk a quarrel with the Holy See. This unsettled state continued, the Pragmatic Sanction neither quite enforced nor quite repealed, till Francis I., having ac-

commodated the differences of his predecessor with Rome, agreed upon a final concordat with Leo X., the treaty that subsisted for almost three centuries between the papacy and the kingdom of France. Instead of capitular election or papal provision, a new method was devised for filling the vacancies of episcopal sees. The king was to nominate a fit person, whom the pope was to collate. The one obtained an essential patronage, the other preserved his theoretical supremacy. Annats were restored to the pope; a concession of great importance. He gave up his indefinite prerogative of reserving benefices, and received only a small stipulated patronage. This convention met with strenuous opposition in France; the Parliament of Paris yielded only to force; the university hardly stopped short of sedition; the zealous Gallicans have ever since deplored it, as a fatal wound to their liberties. There is much exaggeration in this, as far as the relation of the Gallican Church to Rome is concerned; but the royal nomination to bishoprics impaired of course the independence of the hierarchy.

From the principles established during the schism, and in the Pragmatic Sanction of Bourges, arose the far-famed liberties of the Gallican Church, which honorably distinguished her from other members of the Roman communion. These liberties do not strictly fall within my limits; and it will be sufficient to observe that they depended upon two maxims; one, that the pope does not possess any direct or indirect temporal authority; the other, that his spiritual jurisdiction can only be exercised in conformity with such parts of the common law as are received by the kingdom of France. Hence the Gallican Church rejected a great part of the Sext and Clementines, and paid little regard to modern papal bulls, which in fact obtained validity only by the king's approbation.

The pontifical usurpations which were thus restrained affected, at least in their direct operation, rather the Church than the State; and temporal governments would only have been half emancipated, if their national hierarchies had preserved their enormous jurisdiction. England, in this also, began the work, and had made a considerable progress, while the mistaken piety or policy of Louis IX. and his successors had laid France open to vast encroachments. But the Parliament of Paris, instituted in 1304, gradually established a paramount authority over ecclesiastical as well as civil tribunals. Their progress was indeed very slow, and it was not till the beginning of the sixteenth century that they devised their famous form of procedure, the "appeal because of abuse."

This, in the course of time, and through the decline of ecclesiastical power, not only proved an effectual barrier against encroachments of spiritual jurisdiction, but drew back again to the lay court the greater part of those causes which by prescription, and indeed by law, had appertained to a different cognizance. Thus testamentary, and even, in a great degree, matrimonial causes were decided by the Parliament; and in many other matters that body, being the judge of its own competence, narrowed, by means of the appeal because of abuse, the boundaries of the opposite jurisdiction. This remedial process appears to have been more extensively applied than our English writ of prohibition. The latter merely restrains the interference of the ecclesiastical courts in matters which the law has not committed to them. But the Parliament of Paris considered itself as conservator of the liberties and discipline of the Gallican Church; and interposed the appeal because of abuse, whenever the spiritual court, even in its proper province, transgressed the canonical rules by which it ought to be governed.

§ 20. While the bishops of Rome were losing their general influence over Europe, they did not gain more estimation in Italy. It is indeed a problem of some difficulty, whether they derived any substantial advantage from their temporal principality. From the termination of the schism, as the popes found their ambition thwarted beyond the Alps, it was diverted more and more towards schemes of temporal sovereignty. In these we do not perceive that consistent policy which remarkably actuated their conduct as supreme heads of the Church. Men generally advanced in years, and born of noble Italian families, made the papacy subservient to the elevation of their kindred, or to the interests of a local faction. For such ends they mingled in the dark conspiracies of that bad age, distinguished only by the more scandalous turpitude of their vices from the petty tyrants and intriguers with whom they were engaged. In the latter part of the fifteenth century, when all favorable prejudices were worn away, those who occupied the most conspicuous station in Europe disgraced their name by more notorious profligacy than could be paralleled in the darkest age that had preceded; and at the moment beyond which this work is not carried—the invasion of Italy by Charles VIII.—I must leave the pontifical throne in the possession of Alexander VI.

CHAPTER VIII.

THE ANGLO-SAXON CONSTITUTION.

PART I.

§ 1. Sketch of Anglo-Saxon History. § 2. Succession to the Crown. § 3. Influence of Provincial Governors. § 4. Orders of Men. Thanes and Ceorls. § 5. British Natives and Slaves. § 6. Witenagemot. § 7. Judicial System. Division into Hundreds. County Court. § 8. Trial by Jury. Its Antiquity investigated. § 9. Law of Frank-pledge. Its several Stages. § 10. Question of Feudal Tenures before the Conquest.

§ 1. THE seven very unequal kingdoms of the Saxon Heptarchy, formed successively out of the countries wrested from the Britons, were originally independent of each other. Several times, however, a powerful sovereign acquired a preponderating influence over his neighbors, marked perhaps by the payment of tribute. Seven are enumerated by Bede as having thus reigned over the whole of Britain; an expression which must be very loosely interpreted.[1] Three kingdoms became at length predominant — those of Wessex, Mercia, and Northumberland. The first rendered tributary the small estates of the South-east, and the second that of the Eastern Angles. But Egbert, king of Wessex, not only incorporated with his own monarchy the dependent kingdoms of Kent and Essex, but obtained an acknowledgment of his superiority from Mercia and Northumberland; the latter of which, though the most extensive of any Anglo-Saxon state, was too much weakened by its internal divisions to offer any resistance. Still, however, the kingdoms of Mercia, East Anglia, and Northumberland remained under their ancient line of sovereigns; nor did either Egbert or his five immediate successors assume the title of any other crown than Wessex.

The destruction of those minor states was reserved for a different enemy. About the end of the eighth century the Northern pirates began to ravage the coast of England. Scandinavia exhibited in that age a very singular condition of society. Her population, continually redundant in those barren regions which gave it birth, was cast out in search of plunder upon the ocean. Those who loved riot rather than

[1] See NOTE I., "The Bretwaldas."

famine embarked in large armaments under chiefs of legitimate authority as well as approved valor. Such were the Sea-kings, renowned in the stories of the North—the younger branches, commonly, of royal families, who inherited, as it were, the sea for their patrimony. Without any territory but on the bosom of the waves, without any dwelling but their ships, these princely pirates were obeyed by numerous subjects, and intimidated mighty nations. Their invasions of England became continually more formidable; and, as their confidence increased, they began first to winter, and ultimately to form permanent settlements in the country. By their command of the sea, it was easy for them to harass every part of an island presenting such an extent of coast as Britian; the Saxons, after a brave resistance, gradually gave way, and were on the brink of the same servitude or extermination which their own arms had already brought upon the ancient possessors.

From this imminent peril, after the three dependent kingdoms, Mercia, Northumberland, and East Anglia, had been overwhelmed, it was the glory of Alfred to rescue the Anglo-Saxon monarchy. Nothing less than the appearance of a hero so undesponding, so enterprising, and so just, could have prevented the entire conquest of England. Yet he never subdued the Danes, nor became master of the whole kingdom. The Thames, the Lea, the Ouse, and the Roman road called Watling Street, determined the limits of Alfred's dominion. To the north-east of this boundary were spread the invaders, still denominated the *armies* of East Anglia and Northumberland; a name terribly expressive of foreign conquerors, who retained their warlike confederacy, without melting into the mass of their subject population. Three able and active sovereigns, Edward, Athelstan, and Edmund, the successors of Alfred, pursued the course of victory, and not only rendered the English monarchy co-extensive with the present limits of England, but asserted at least a supremacy over the bordering nations.[1] Yet even Edgar, the most powerful of the Anglo-Saxon kings, did not venture to interfere with the legal customs of his Danish subjects.[2]

Under this prince, whose rare fortune as well as judicious conduct procured him the surname of Peaceable, the kingdom appears to have reached its zenith of prosperity. But his premature death changed the scene. The minority and

[1] See NOTE II., "Saxon Kings of all England."

[2] It seems now to be ascertained, by the comparison of dialects, that the inhabitants from the Humber, or at least the Tyne, to the Firth of Forth, were chiefly Danes.

feeble character of Ethelred II. provoked fresh incursions of our enemies beyond the German Sea. A long series of disasters, and the inexplicable treason of those to whom the public safety was intrusted, overthrew the Saxon line, and established Canute of Denmark upon the throne.

The character of the Scandinavian nations was in some measure changed from what it had been during their first invasions. They had embraced the Christian faith; they were consolidated into great kingdoms; they had lost some of that predatory and ferocious spirit which a religion invented, as it seemed, for pirates had stimulated. Those, too, who had long been settled in England became gradually more assimilated to the natives, whose laws and language were not radically different from their own. Hence the accession of a Danish line of kings produced neither any evil nor any sensible change of polity. But the English still outnumbered their conquerors, and eagerly returned, when an opportunity arrived, to the ancient stock. Edward the Confessor, notwithstanding his Norman favorites, was endeared by the mildness of his character to the English nation, and subsequent miseries gave a kind of posthumous credit to a reign not eminent either for good-fortune or wise government.

§ 2. In a stage of civilization so little advanced as that of the Anglo-Saxons, and under circumstances of such incessant peril, the fortunes of a nation chiefly depend upon the wisdom and valor of its sovereigns. No free people, therefore, would intrust their safety to blind chance, and permit an uniform observance of hereditary succession to prevail against strong public expediency. Accordingly, the Saxons, like most other European nations, while they limited the inheritance of the crown exclusively to one royal family, were not very scrupulous about its devolution upon the nearest heir. It is an unwarranted assertion of Carte, that the rule of the Anglo-Saxon monarchy was "lineal agnatic succession, the blood of the second son having no right until the extinction of that of the eldest."[4] Unquestionably the eldest son of the last king, being of full age, and not manifestly incompetent, was his natural and probable successor; nor is it, perhaps, certain that he always waited for an election to take upon himself the rights of sovereignty, although the ceremony of coronation, according to the ancient form, appears to imply its necessity. But the public security in

[4] Vol. I., p. 335. Blackstone has labored to prove the same proposition; but his knowledge of English history was rather superficial.

those times was thought incompatible with a minor king; and the artificial substitution of a regency, which stricter notions of hereditary right have introduced, had never occurred to so rude a people. Thus, not to mention those instances which the obscure times of the Heptarchy exhibit, Ethelred I., as some say, but certainly Alfred, excluded the progeny of their elder brother from the throne. Alfred, in his testament, dilates upon his own title, which he builds upon a triple foundation, the will of his father, the compact of his brother Ethelred, and the consent of the West-Saxon nobility. A similar objection to the government of an infant seems to have rendered Athelstan, notwithstanding his reputed illegitimacy, the public choice upon the death of Edward the Elder. Thus, too, the sons of Edmund I. were postponed to their Uncle Eldred, and again, preferred to his issue. And happy might it have been for England if this exclusion of infants had always obtained. But upon the death of Edgar, the royal family wanted some prince of mature years to prevent the crown from resting upon the head of a child; and hence the minorities of Edward II. and Ethelred II. led to misfortunes which overwhelmed for a time both the house of Cerdic and the English nation.

§ 3. The Anglo-Saxon monarchy, during its earlier period, seems to have suffered but little from that insubordination among the superior nobility which ended in dismembering the empire of Charlemagne. Such kings as Alfred and Athelstan were not likely to permit it. And the English counties, each under its own alderman, were not of a size to encourage the usurpation of their governors. But when the whole kingdom was subdued, there arose, unfortunately, a fashion of intrusting great provinces to the administration of a single earl. Notwithstanding their union, Mercia, Northumberland, and East Anglia were regarded in some degree as distinct parts of the monarchy. A difference of laws, though probably but slight, kept up this separation. Alfred governed Mercia by the hands of a nobleman who had married his daughter Ethelfleda; and that lady after her husband's death held the reins with a masculine energy till her own, when her brother Edward took the province into his immediate command. But from the era of Edward II.'s succession the provincial governors began to overpower the royal authority, as they had done upon the Continent. England under this prince was not far removed from the condition of France under Charles the Bald. In the time of Edward the Confessor the whole kingdom seems to have

been divided among five earls;[a] three of whom were Godwin and his sons Harold and Tostig. It can not be wondered at that the royal line was soon supplanted by the most powerful and popular of these leaders, a prince well worthy to have founded a new dynasty, if his eminent qualities had not yielded to those of a still more illustrious enemy.

§ 4. The proper division of freemen was into EORLS and CEORLS, a division corresponding to the phrase "gentle and simple" of later times. The eorl was a gentleman, the ceorl a yeoman, but both freemen. The eorl did not become a title of office till the eleventh century, when it was used as synonymous to alderman for the governor of a county or province. After the word became used in this restricted sense, the class of persons which it originally designated was called *Thanes*, and accordingly we have the twofold division of freemen into THANES and CEORLS.

Among all the Northern nations, as is well known, the weregild, or compensation for murder, was the standard measure of the gradations of society. In the Anglo-Saxon laws we find two ranks of freeholders; the first, called King's Thanes, whose lives were valued at 1200 shillings; the second, of inferior degree, whose composition was half that sum. That of a ceorl was 200 shillings. If this proportion to the value of a thane points out the subordination of rank, it certainly does not exhibit the lower freemen in a state of complete abasement. The ceorl was not bound, at least universally, to the land which he cultivated. He was occasionally called upon to bear arms for the public safety; he was protected against personal injuries, or trespasses on his land; he was capable of property, and of the privileges which it conferred. If he came to possess five hides of land (or about 600 acres), with a church and mansion of his own, he was entitled to the name and rights of a thane. And if by owning five hides of land he became a thane, it is plain that he might possess a less quantity without reaching that rank. There were, therefore, ceorls with land of their own, and ceorls without land of their own; ceorls who might commend themselves to what lord they pleased, and ceorls who could not quit the land on which they lived, owing various services to the lord of the manor, but always freemen, and capable of becoming gentlemen.

Nobody can doubt that the *villani* and *bordarii* of Doomsday-book, who are always distinguished from the serfs of the demesne, were the ceorls of Anglo-Saxon law. And I

[a] See p. 402.

presume that the *socmen*, who so frequently occur in that record, though far more in some counties than in others, were ceorls more fortunate than the rest, who, by purchase, had acquired freeholds, or, by prescription and the indulgence of their lords, had obtained such a property in the outlands allotted to them that they could not be removed, and in many instances might dispose of them at pleasure. They are the root of a noble plant, the free socage tenants, or English yeomanry, whose independence has stamped with peculiar features both our constitution and our national character.[4]

§ 5. Beneath the ceorls in political estimation were the conquered natives or Britons. In a war so long and so obstinately maintained as that of the Britons against their invaders, it is natural to conclude that in a great part of the country the original inhabitants were almost extirpated, and that the remainder were reduced into servitude. This, till lately, has been the concurrent opinion of our antiquaries; and, with some qualification, I do not see why it should not still be received. In every kingdom of the Continent which was formed by the Northern nations out of the Roman Empire, the Latin language preserved its superiority, and has much more been corrupted through ignorance and want of a standard than intermingled with their original idiom. But our own language is, and has been from the earliest times after the Saxon conquest, essentially Teutonic, and of the most obvious affinity to those Low-German dialects which are spoken along the coast from Flanders to Holstein. With such as are extravagant enough to controvert so evident a truth it is idle to contend; and those who believe great part of our language to be borrowed from the Welsh may doubtless infer that great part of our population is derived from the same source. If we look through the subsisting Anglo-Saxon records, there is not very frequent mention of British subjects. But some undoubtedly there were in a state of freedom, and possessed of landed estate. A Welshman (that is, a Briton) who held five hides was raised, like a ceorl, to the dignity of thane. In the composition, however, for their lives, and consequently in their rank in society, they were inferior to the meanest Saxon freeman. The slaves, who were frequently the objects of legislation, rather for the purpose of ascertaining their punishments than of securing their rights, may be presumed, at least in early times, to have been part of the conquered Britons. For though his own crimes,

[4] For further information upon these points, see Note III., "Eorl and Ceorl."

or the tyranny of others, might possibly reduce a Saxon ceorl to this condition, it is inconceivable that the lowest of those who won England with their swords should, in the establishment of the new kingdoms, have been left destitute of personal liberty.

§ 6. The great council by which an Anglo-Saxon king was guided in all the main acts of government bore the appellation of WITENAGEMOT, or the *Assembly of the Wise Men.* All their laws express the assent of this council; and there are instances where grants made without its concurrence have been revoked. It was composed of prelates and abbots, of the aldermen of shires, and, as it is generally expressed, of the noble and wise men of the kingdom. Whether the lesser thanes, or inferior proprietors of lands, were entitled to a place in the national council, as they certainly were in the Shirgemot, or County Court, is not easily to be decided. If, however, all the body of thanes or freeholders were admissible to the witenagemot, it is unlikely that the privilege should have been fully exercised. Very few, I believe, at present imagine that there was any representative system in that age; much less that the ceorls or inferior freemen had the smallest share in the deliberations of the national assembly. Every argument which a spirit of controversy once pressed into this service has long since been victoriously refuted.[7]

§ 7. It has been justly remarked by Hume that, among a people who lived in so simple a manner as these Anglo-Saxons, the judicial power is always of more consequence than the legislative. The liberties of these Anglo-Saxon thanes were chiefly secured, next to their swords and their free spirits, by the inestimable right of deciding civil and criminal suits in their own County Court; an institution which, having survived the Conquest, and contributed in no small degree to fix the liberties of England upon a broad and popular basis, by limiting the feudal aristocracy, deserves attention in following the history of the British constitution.

The division of the kingdom into counties, and of these into hundreds and decennaries, for the purpose of administering justice, was not peculiar to England. In the early laws of France and Lombardy, frequent mention is made of the Hundred-court, and, now and then, of those petty village magistrates who in England were called tithing-men. It has been usual to ascribe the establishment of this system among our Saxon ancestors to Alfred, upon the authority of

[7] NOTE IV., "The Witenagemot."

Ingulfus, a writer contemporary with the Conquest, but the work which bears his name is now usually considered a forgery. Neither the biographer of Alfred, Asserius, nor the existing laws of that prince, attribute the system to Alfred. With respect, indeed, to the division of counties, and their government by aldermen and sheriffs, it is certain that both existed long before his time; and the utmost that can be supposed is, that he might in some instances have ascertained an unsettled boundary. There does not seem to be equal evidence as to the antiquity of the minor divisions. Hundreds, I think, are first mentioned in a law of Edgar, and tithings in one of Canute. But as Alfred, it must be remembered, was never master of more than half the kingdom, the complete distribution of England into these districts can not, upon any supposition, be referred to him.

There is, indeed, a circumstance observable in this division which seems to indicate that it could not have taken place at one time, nor upon one system; I mean the extreme inequality of hundreds in different parts of England. Whether the name be conceived to refer to the number of free families, or of land-holders, or of petty vills, forming so many associations of mutual assurance or frank-pledge, one can hardly doubt that, when the term was first applied, a hundred of one or other of these were comprised, at an average reckoning, within the district. But it is impossible to reconcile the varying size of hundreds to any single hypothesis. The county of Sussex contains sixty-five, that of Dorset forty-three; while Yorkshire has only twenty-six, and Lancashire but six. No difference of population, though the south of England was undoubtedly far the best peopled, can be conceived to account for so prodigious a disparity. I know of no better solution than that the divisions of the North, properly called wapentakes, were planned upon a different system, and obtained the denomination of hundreds incorrectly after the union of all England under a single sovereign.

Assuming, therefore, the name and partition of hundreds to have originated in the southern counties, it will rather, I think, appear probable that they contained only a hundred free families, including the ceorls as well as their landlords. If we suppose none but the latter to have been numbered, we should find 6000 thanes in Kent, and 6500 in Sussex—a reckoning totally inconsistent with any probable estimate. But though we have little direct testimony as to the population of those times, there is one passage which falls in very sufficiently with the former supposition. Bede says that the

kingdom of the South Saxons, comprehending Surrey as well as Sussex, contained 7000 families. The county of Sussex alone is divided into sixty-five hundreds, which comes at least close enough to prove that free families, rather than proprietors, were the subject of that numeration.

The COURT OF THE HUNDRED was held, as on the Continent, by its own centenarius, or hundred-man, more often called alderman, and, in the Norman times, bailiff or constable, but under the sheriff's writ. It is, in the language of the law, the sheriff's tourn and leet. And in the Anglo-Saxon age it was a court of justice for suitors within the hundred, though it could not execute its process beyond that limit. It also punished small offenses, and was intrusted with the "view of frank-pledge," and the maintenance of the great police of mutual surety. In some cases—that is, when the hundred was competent to render judgment—it seems that the County Court could only exercise an appellate jurisdiction for denial of right in the lower tribunal. But, in course of time, the former and more celebrated court became the real arbiter of important suits; and the court-leet fell almost entirely into disuse as a civil jurisdiction, contenting itself with punishing petty offenses and keeping up a local police.[8] It was to the COUNTY COURT that an English freeman chiefly looked for the maintenance of his civil rights. In this assembly, held twice in the year by the bishop and the alderman,[9] or, in his absence, the sheriff, the oath of allegiance was administered to all freemen, breaches of the peace were inquired into, crimes were investigated, and claims were determined. In this court alone, the thanes, to the exclusion of inferior freemen, were the judges of civil controversies. The latter, indeed, were called upon to attend its meetings, or, in the language of our present law, were suitors to the court, and it was penal to be absent. But this was on account of other duties, the oath of allegiance which they were to take, or the frank-pledges into which they were to enter, not in order to exercise any judicial power; unless we con-

[8] Sir F. Palgrave, in the "Edinburgh Review" for 1822 (xxxvi., 287), deduces the hundred from the *hærad* of the Scandinavian kingdoms, the integral unit of the Scandinavian commonwealths. He points out that the hundred was as much the organic germ of the Anglo-Saxon commonwealth as the hærad was of the Scandinavian. Thus, the leet, held every month, and composed of the tithing-men or headboroughs, representing the inhabitants, were both the inquest and the jury, possessing jurisdiction, as he conceives, in all cases, civil, criminal, and ecclesiastical, though this was restrained after the Conquest.

[9] The alderman was the highest rank after the royal family, to which he sometimes belonged. Every county had its alderman; but the name is not applied in written documents to magistrates of boroughs before the Conquest.

ceive that the disputes of the ceorls were decided by judges of their own rank. No appeal could be made to the royal tribunal, unless justice was denied in the County Court. There were, however, royal judges, who, either by way of appeal from the lower courts, or in excepted cases, formed a paramount judicature; but how their court was composed under the Anglo-Saxon sovereigns, I do not pretend to assert.

§ 8. It had been a prevailing opinion that trial by jury may be referred to the Anglo-Saxon age, and common tradition has ascribed it to the wisdom of Alfred; but this opinion is now universally abandoned. The only passage in the laws of Alfred bearing upon this point is as follows: "If any one accuse a king's thane of homicide, if he dare to purge himself, let him do it along with twelve king's thanes." "If any one accuse a thane of less rank than a king's thane, let him purge himself along with eleven of his equals, and one king's thane." This law, which some contend to mean nothing but trial by jury, really refers to that ancient usage of compurgation, where the accused sustained his own oath by those of a number of his friends, who pledged their knowledge, or at least their belief, of his innocence. Other passages in the Saxon laws which have been cited in favor of the antiquity of trial by jury equally refer to compurgators. Their numbers were sometimes twelve, at other times twenty-four, and occasionally thirty-six.

The principle of the whole law of compurgation is to be found in that stress laid upon general character which pervades the Anglo-Saxon jurisprudence. The law of frankpledge proceeded upon the maxim that the best guaranty of every man's obedience to the government was to be sought in the confidence of his neighbors.

The seeds of our present form of trial by jury may be discovered in a law of Ethelred II., by which a court was to be held in every wapentake, where the sheriff and twelve principal thanes should swear that they would neither acquit any criminal nor convict any innocent person. It seems more probable that these thanes were permanent assessors to the sheriff, like the scabini, so frequently mentioned in the early laws of France and Italy, than jurors indiscriminately selected. Their duties were to present offenders, and they bear analogy to our grand juries. They must be clearly distinguished from the compurgators already mentioned.

The nearest approach to a regular jury which has been preserved in our scanty memorials of the Anglo-Saxon age occurs in the history of the monastery of Ramsey. A contro-

versy relating to lands between that society and a certain nobleman was brought into the County Court, when each party was heard in his own behalf. After this commencement, on account, probably, of the length and difficulty of the investigation, it was referred by the court to thirty-six thanes, equally chosen by both sides. And here we begin to perceive the manner in which those tumultuous assemblies—the mixed body of freeholders in their County Court—slid gradually into a more steady and more diligent tribunal. But this was not the work of a single age. In the Conqueror's reign we find a proceeding very similar to the case of Ramsey, in which the suit had been commenced in the County Court before it was found expedient to remit it to a select body of freeholders. In the reign of William Rufus, and down to that of Henry II., when the trial of writs of right by the Grand Assize was introduced, there are other instances of the original usage.

It is impossible not to be struck with the preference given to twelve, or some multiple of it, in fixing the number either of judges or compurgators. This was not peculiar to England—there are several instances of it in the early German laws; and that number seems to have been regarded with equal veneration in Scandinavia. It is very immaterial from what caprice or superstition this predilection arose, but its general prevalence shows that, in searching for the origin of trial by jury, we can not rely for a moment upon any analogy which the mere number affords. I am induced to make this observation, because some of the passages which have been alleged by eminent men for the purpose of establishing the existence of that institution before the Conquest seem to have little else to support them.[10]

§ 9. There is certainly no part of the Anglo-Saxon polity which has attracted so much the notice of modern times as the law of *frank-pledge*, or mutual responsibility of the members of a tithing for each other's abiding the course of justice. This, like the distribution of hundreds and tithings themselves, and like trial by jury, has been generally attributed to Alfred; and of this, I suspect, we must also deprive him.

The peculiar system of frank-pledges seems to have passed through the following very gradual stages: At first, an accused person was obliged to find bail for standing his trial. At a subsequent period, his relations were called upon to become sureties for payment of the composition and other fines to which he was liable. They were even subject to be imprisoned until payment was made, and this imprisonment

[10] NOTE V., "Trial by Jury."

was commutable for a certain sum of money. The next stage was, to make persons already convicted, or of suspicious repute, give sureties for their future behavior. It is not till the reign of Edgar that we find the first general law, which places every man in the condition of the guilty or suspected, and compels him to find a surety, who shall be responsible for his appearance when judicially summoned. This is perpetually repeated and enforced in later statutes, during his reign and that of Ethelred. Finally, the laws of Canute declare the necessity of belonging to some hundred and tithing, as well as of providing sureties; and it may, perhaps, be inferred that the custom of rendering every member of a tithing answerable for the appearance of all the rest, as it existed after the Conquest, is as old as the reign of this Danish monarch.

It is an error to suppose, as some have stated, that "the members of every tithing were responsible for the conduct of one another; and that the society, or their leader, might be prosecuted and compelled to make reparation for an injury committed by any individual." In fact, the members of a tithing were no more than perpetual bail for each other. "The greatest security of the public order (say the laws ascribed to the Confessor) is that every man must bind himself to one of those societies which the English in general call freeborgs, and the people of Yorkshire ten men's tale." This consisted in the responsibility of ten men, each for the other, throughout every village in the kingdom; so that, if one of the ten committed any fault, the nine should produce him in justice; where he should make reparation by his own property or by personal punishment. If he fled from justice a mode was provided according to which the tithing might clear themselves from participation in his crime or escape; in default of such exculpation, and the malefactor's estate proving deficient, they were compelled to make good the penalty. And it is equally manifest, from every other passage in which mention is made of this ancient institution, that the obligation of the tithing was merely that of permanent bail, responsible only indirectly for the good behavior of their members.

Every freeman above the age of twelve years was required to be enrolled in some tithing. In order to enforce this essential part of police, the courts of the tourn and leet were erected, or rather, perhaps, separated from that of the county. The periodical meetings of these, whose duty it was to inquire into the state of tithings, whence they were called

the view of frank-pledge, are regulated in Magna Charta. But this custom, which seems to have been in full vigor when Bracton wrote, and is enforced by a statute of Edward II., gradually died away in succeeding times.

§ 10. It remains only, before we conclude this sketch of the Anglo-Saxon system, to consider the once famous question respecting the establishment of feudal tenures in England before the Conquest.

The distribution of landed property in England by the Anglo-Saxons is clearly explained by Mr. Allen, in his inquiry into the "Rise and Growth of the Royal Prerogative." "Part of the lands they acquired was converted into estates of inheritance for individuals; part remained the property of the public, and was left to the disposal of the state. The former was called *Bocland;* the latter *Folcland.*

"*Folcland*, as the word imports, was the land of the *folk*, or people. It was the property of the community. It might be occupied in common, or possessed in severalty. But, while it continued to be folcland, it could not be alienated in perpetuity; and therefore, on the expiration of the term for which it had been granted, it reverted to the community, and was again distributed by the same authority.

"*Bocland* was held by *book*, or charter. It was land that had been severed by an act of government from the folcland, and converted into an estate of perpetual inheritance. It might belong to the Church, to the king, or to a subject. It might be alienable and devisable at the will of the proprietor. It might be limited in its descent without any power of alienation in the possessor. It was often granted for a single life, or for more lives than one, with remainder in perpetuity to the Church. It was forfeited for various delinquencies to the state.

"Folcland was subject to many burdens and exactions from which bocland was exempt. The possessors of folcland were bound to assist in the reparation of royal vills and in other public works. They were liable to have travellers and others quartered on them for subsistence. They were required to give hospitality to kings and great men in their progresses through the country, to furnish them with carriages and relays of horses, and to extend the same assistance to their messengers, followers, and servants, and even to the persons who had charge of their hawks, horses, and hounds. Such, at least, are the burdens from which lands are liberated when converted by charter into bocland.

"Bocland was liable to none of these exactions. It was

released from all services to the public, with the exception of contributing to military expeditions, and to the reparation of castles and bridges. These duties or services were comprised in the phrase of *trinoda necessitas*, which were said to be incumbent on all persons, so that none could be excused from them. The Church indeed contrived, in some cases, to obtain an exemption from them; but in general its lands, like those of others, were subject to them" (p. 142).

The obligations of the *trinoda necessitas*, and especially that of military service, have been sometimes thought to denote a feudal tenure. There is, however, a confusion into which we may fall by not sufficiently discriminating the rights of a king as chief lord of his vassals, and as sovereign of his subjects. In every country the supreme power is entitled to use the arm of each citizen in the public defense. The usage of all nations agrees with common reason in establishing this great principle. There is nothing, therefore, peculiarly feudal in this military service of land-holders; it was due from the allodial proprietors upon the Continent; it was derived from their German ancestors; it had been fixed, probably, by the legislatures of the Heptarchy upon the first settlement in Britain.

It is material, however, to observe that a thane forfeited his hereditary freehold by misconduct in battle—a penalty more severe than was inflicted upon allodial proprietors on the Continent. We even find in the earliest Saxon laws that the sithcundman, who seems to have corresponded to the inferior thane of later times, forfeited his land by neglect of attendance in war; for which an allodialist in France would only have paid his heribannum, or penalty. Nevertheless, as the policy of different states may enforce the duties of subjects by more or less severe sanctions, I do not know that a law of forfeiture in such cases is to be considered as positively implying a feudal tenure.

But a much stronger presumption is afforded by passages that indicate a mutual relation of lord and vassal among the free proprietors. The most powerful subjects have not a natural right to the service of other freemen. But in the laws enacted during the Heptarchy we find that the sithcundman, or petty gentleman, might be dependent on a superior lord. This is more distinctly expressed in some ecclesiastical canons, apparently of the tenth century, which distinguish the king's thane from the land-holder, who depended upon a lord. Other proofs of this might be brought from the Anglo-Saxon laws. It is not, however, sufficient to prove

a mutual relation between the higher and lower order of gentry, in order to establish the existence of feudal tenures. For this relation was often personal, and bore the name of commendation. And no nation was so rigorous as the English in compelling every man, from the king's thane to the ceorl, to place himself under a lawful superior. Hence the question is not to be hastily decided on the credit of a few passages that express this gradation of dependence; feudal vassalage, the object of our inquiry, being of a *real*, not a *personal* nature, and resulting entirely from the tenure of particular lands. But it is not unlikely that the personal relation of client, if I may use that word, might in a multitude of cases be changed into that of vassal. And, certainly, many of the motives which operated in France to produce a very general commutation of allodial into feudal tenure, might have a similar influence in England, where the disorderly condition of society made it the interest of every man to obtain the protection of some potent lord.

The word thane corresponds in its derivation to vassal; and the latter term is used by Asserius, the contemporary biographer of Alfred, in speaking of the nobles of that prince. In their attendance, too, upon the royal court, and the fidelity which was expected from them, the king's thanes seem exactly to have resembled that class of followers who, under different appellations, were the guards, as well as courtiers, of the Frank and Lombard sovereigns. But I have remarked that the word thane is not applied to the whole body of gentry in the more ancient laws, where the word *earl* is opposed to the *ceorl*, or roturier, and that of *sithcundman* to the royal thane. It would be too much to infer, from the extension of this latter word to a large class of persons, that we should interpret it with a close attention to etymology, a very uncertain guide in almost all investigations.

For the age immediately preceding the Norman invasion we can not have recourse to a better authority than Doomsday-book. That incomparable record contains the names of every tenant, and the conditions of his tenure, under the Confessor, as well as at the time of its compilation, and seems to give little countenance to the notion that a radical change in the system of our laws had been effected during the interval. In almost every page we meet with tenants either of the crown or of other lords, denominated thanes, freeholders (liberi homines), or socagers (socmanni). Some of these, it is stated, might sell their lands to whom they pleased; others were restricted from alienation. Some, as it is expressed,

might go with their lands whither they would; by which I understand the right of commending themselves to any patron of their choice. These, of course, could not be feudal tenants in any proper notion of that term. Others could not depart from the lord whom they served; not, certainly, that they were personally bound to the soil, but that, so long as they retained it, the seigniory of the superior could not be defeated. But I am not aware that military service is specified in any instance to be due from one of these tenants; though it is difficult to speak as to a negative proposition of this kind with any confidence.

No direct evidence appears as to the ceremony of homage, or the oath of fealty, before the Conquest. The feudal exaction of aid, in certain prescribed cases, seems to have been unknown. Still less could those of wardship and marriage prevail, which were no general parts of the great feudal system. The English lawyers, through an imperfect acquaintance with the history of feuds upon the Continent, have treated these unjust innovations as if they had formed essential parts of the system, and sprung naturally from the relation between lord and vassal. And, with reference to the present question, Sir Henry Spelman has certainly laid too much stress upon them in concluding that feudal tenures did not exist among the Anglo-Saxons, because their lands were not in ward, nor their persons sold in marriage.

It has been shown in another place how the right of territorial jurisdiction was generally, and at last inseparably, connected with feudal tenure. Of this right we meet frequent instances in the laws and records of the Anglo-Saxons. And Doomsday-book is full of decisive proofs that the English lords had their courts wherein they rendered justice to their suitors, like the Continental nobility — privileges which are noticed with great precision in that record, as part of the statistical survey. For the right of jurisdiction, at a time when punishments were almost wholly pecuniary, was a matter of property, and sought from motives of rapacity as well as pride.

Whether, therefore, the law of feudal tenures can be said to have existed in England before the Conquest, must be left to every reader's determination. Perhaps any attempt to decide it positively would end in a verbal dispute. In tracing the history of every political institution, three things are to be considered—the principle, the form, and the name. The last will probably not be found in any genuine Anglo-Saxon record. Of the form, or the peculiar ceremonies and inci-

dents of a regular fief, there is some, though not much, appearance. But those who reflect upon the dependence in which free and even noble tenants held their estates of other subjects, and upon the privileges of territorial jurisdiction, will, I think, perceive much of the intrinsic character of the feudal relation, though in a less mature and systematic shape than it assumed after the Norman Conquest.[11]

[11] It will probably be never disputed again that lands were granted by a military tenure before the Conquest. But the general tenure of lands was still allodial. We may probably not err very much in supposing that the state of tenures in England under Canute or the Confessor was a good deal like those in France under Charlemagne or Charles the Bald—an allodial trunk with numerous branches of feudal benefice grafted into it. But the conversion of the one mode of tenure into the other, so frequent in France, does not appear by evidence to have prevailed on this side of the Channel. On this question Professor Stubbs remarks ("Select Charters," etc., p. 13): "From the end of the tenth century a change sets in which might ultimately, by a slow and steady series of causes and consequences, have produced something like Continental feudalism. The great position taken by Edgar and Canute, to whom the princes of the other kingdoms of the island submitted as vassals, had the effect of centralizing the government and increasing the power of the king. Early in the eleventh century he seems to have entered on the right of disposing of the public land without reference to the witan, and of calling up to his own court by writ suits which had not yet exhausted the powers of the lower tribunals. The number of royal vassals was thus greatly increased, and with them the power of royal and noble jurisdictions. Canute proceeded so far in the direction of imperial feudalism as to rearrange the kingdom under a very small number of great earls, who were strong enough in some cases to transmit their authority to their children, though not without new investiture, and who, had time been given for the system to work, would have no doubt developed the same sort of feudality as prevailed abroad. Already by subinfeudation or by commendation great portions of the land of the country were being held by a feudal tenure, and the allodial tenure, which had once been universal, was becoming the privilege of a few great nobles too strong to be unseated, or a local usage in a class of land-owners too humble to be dangerous."

NOTES TO CHAPTER VIII.—PART I.

I. THE BRETWALDAS.

These seven princes enumerated by Bede have been called Bretwaldas, and they have, by some late historians, been advanced to higher importance and to a different kind of power than, as it appears to me, there is any sufficient ground to bestow on them. Bede is the original witness for the seven monarchs who before his time had enjoyed a preponderance over the Anglo-Saxons south of the Humbert: "Qui cunctis australibus gentis Anglorum provinciis, quæ Humbræ fluvio et contignis ei terminis sequestrantur a Borealibus, imperârunt." (Hist. Eccl., lib. ii., c. 5.) The four first-named had no authority over Northumbria; but the last three being sovereigns of that kingdom, their sway would include the whole of England.

The Saxon Chronicle, under the reign of Egbert, says that he was the eighth who had a dominion over Britain; using the remarkable word BRETWALDA, which is found nowhere else. This, by its root, *waldan*, a Saxon verb, to rule (whence our word *wield*), implies a ruler of Britain or the Britons. The Chronicle then copies the enumeration of the other seven in Bede, with a little abridgment. The kings mentioned by Bede are Ælli or Ella, founder of the kingdom of the South-Saxons about 477; Ceaulin, of Wessex, after the interval of nearly a century; Ethelbert, of Kent, the first Christian king; Redwald, of East Anglia; after him three

Northumbrian kings in succession, Edwin, Oswald, Oswin. We have, therefore, sufficient testimony that before the middle of the seventh century four kings, from four Anglo-Saxon kingdoms, had, at intervals of time, become superior to the rest; excepting, however, the Northumbrians, whom Bede distinguishes, and whose subjection to a southern prince does not appear at all probable. None, therefore, of these could well have been called Bretwalda, or ruler of the Britons, while not even his own countrymen were wholly under his sway.

We now come to three Northumbrian kings, Edwin, Oswald, and Oswin, who ruled, in Bede's language, with greater power than the preceding, over all the inhabitants of Britain, both English and British, with the sole exception of the men of Kent. This he reports in another place with respect to Edwin, the first Northumbrian convert to Christianity; whose worldly power, he says, increased so much that, what no English sovereign had done before, he extended his dominion to the farthest bounds of Britain, whether inhabited by English or by Britons. (Hist. Eccl., lib. ii., c. 9.) There is a remarkable confirmation of this testimony of Bede in a life of St. Columba, published by the Bollandists, in which Oswald is called "totius Britanniæ imperator ordinatus a Deo." (Acta Sanctorum, Jun. 23.) We have here probably a distinct recognition of the Saxon word Bretwalda; for what else could answer to emperor of Britain? And, as far as I know, it is the only one that exists. It seems more likely that this writing refers to a distinct title bestowed on Oswald by his subjects, than that he means to assert as a fact that he truly ruled over all Britain. This is not very credible, notwithstanding the language of Bede, who loves to amplify the power of favorite monarchs. For though it may be admitted that these Northumbrian kings enjoyed at times a preponderance over the other Anglo-Saxon principalities, we know that both Edwin and Oswald lost their lives in great defeats by Penda of Mercia. Nor were the Strathclyd Britons in any permanent subjection. The name of Bretwalda, as applied to these three kings, though not so absurd as to make it incredible that they assumed it, asserts an untruth.

Rapin was the first who broached the theory of an elective Bretwalda, possessing a sort of monarchical supremacy in the constitution of the Heptarchy; something like, as he says, the dignity of stadtholder of the Netherlands. It was taken up in later times by Turner, Lingard, Palgrave, and Lappenberg. But for this there is certainly no evidence whatever; nor do I perceive in it any thing but the very reverse of probability, especially in the earlier instances. With what we read in Bede we may be content, confirmed as with respect to a Northumbrian sovereign it appears to be by the Life of Columba; and the plain history will be no more than this—that four princes from among the southern Anglo-Saxon kingdoms, at different times obtained, probably by force, a superiority over the rest; that afterwards three Northumbrian kings united a similar supremacy with the government of their own dominions; and that, having been successful in reducing the Britons of the north and also the Scots into subjection, they assumed the title of Bretwalda, or ruler of Britain. This title was not taken by any later kings, though some in the eighth century were very powerful in England; nor did it attract much attention, since we find the word only once employed by an historian, and never in a charter. The consequence I should draw is, that too great prominence has been given to the appellation, and undue inferences sometimes derived from it, by the eminent writers above mentioned.

II. SAXON KINGS OF ALL ENGLAND.

The reduction of all England under a single sovereign was accomplished by Edward the Elder, who may, therefore, be reckoned the founder of our monarchy more justly than Egbert. From this time a striking change is remarkable in the style of our kings. Edward, of whom we have no extant charters after these great submissions of the native princes, calls himself only "Angul-Saxonum rex." But in those of his son Athelstan, such as are reputed genuine (for the tone is still more pompous in some marked by Mr. Kemble with an asterisk), we meet, as early as 927, with "totius Britanniæ monarchus, rex, rector, or basileus;" "totius Britanniæ solio sublimatus;" and other phrases of *insular* sovereignty. What has been attributed to the imaginary Bretwaldas, belonged truly to the kings of the tenth century. And the grandiloquence of their titles is sometimes almost ridiculous. They affected particularly that of Basileus as something more imperial than king, and less easily understood. Edwy and Edgar are remarkable for this pomp, which shows itself also in the spurious charters of older kings. But Edmund and Edred with more truth and simplicity had generally denominated themselves "rex Anglorum, cæte-

rorumque in circuitu persistentium gubernator et rector." An expression which was retained sometimes by Edgar. And though these exceedingly pompous phrases seem to have become less frequent in the next century, we find "totius Albionis rex," and equivalent terms, in all the charters of Edward the Confessor.

"As a general rule it may be observed that before the tenth century the proem is comparatively simple; that about that time the influence of the Byzantine court began to be felt; and that from the latter half of that century pedantry and absurdity struggle for the mastery." (Kemble's Introduction to vol. ii., p. x.)

III. EORLS AND CEORLS.

It has been remarked in the text that the proper division of freemen was into EORLS and CEORLS: *ge eorle—ge ceorle; ge eorlische—ge ceorlische*, corresponding to the phrase "gentle and simple" of later times. The *Eorlcundman* was generally, though not necessarily, a freeholder; he might, unless restrained by special tenure, depart from or alienate his land; he was, if a freeholder, a judge in the County Court; he might marry, or become a priest, at his discretion; his oath weighed heavily in compurgation; above all, his life was valued at a high composition; we add, of course, the general respect which attaches itself to the birth and position of a gentleman. Two classes indeed there were, both *Eorlcund*, or of gentle birth, and so called in opposition to ceorls, but in a relative subordination. Sir F. Palgrave has pointed out the distinction in the following passage: "The whole scheme of the Anglo-Saxon law is founded upon the presumption that every freeman, not being a *Hlaford*,* was attached to a superior, to whom he was bound by fealty, and from whom he could claim a legal protection or warranty, when accused of any transgression or crime. If, therefore, the *eorlcund* individual did not possess the real property which, either from its tenure or its extent, was such as to constitute a lordship, he was then ranked in the very numerous class whose members, in Wessex and its dependent states, were originally known by the name of *sithcundmen*, an appellation which we may paraphrase by the heraldic expression, 'gentle by birth and blood.'* The term of sithcundman, however, was only in use in the earlier periods. After the reign of Alfred it is lost: and the most comprehensive and significant denomination given to this class is that of *sixhændmen*, indicating their position between the highest and lowest law-worthy classes of society. Other designations were derived from their services and tenures. *Radechnights*, and lesser thanes, seem to be included in this rank, and to which, in many instances, the general name of *sokemen* was applied. But, however designated, the sithcundman, or sixhœndman, appears in every instance in the same relative position in the community—classed among the nobility, whenever the eorl and the ceorl are placed in direct opposition to each other; always considered below the territorial aristocracy, and yet distinguished from the villenage by the important right of selecting his hlaford at his will and pleasure. By common right the *sixhændman* was not to be annexed to the glebe. To use the expressions employed by the compilers of Doomsday, he could 'go with his land wheresoever he chose,' or, leaving his land, he might 'commend' himself to any hlaford who would accept his fealty" (l., 14).

The influence of Danish connections produced great change in the nomenclature of ranks. *Eorl* lost its general sense of good birth and became an official title, for the most part equivalent to alderman, the governor of a shire or district. It is used in this sense, for the first time, in the laws of Edward the Elder, and in the time of Edgar it had fully acquired its secondary meaning; in its original sense it seems to have been replaced by THANE. Certain it is that we find thane opposed to ceorl in the later period of Anglo-Saxon monuments, as eorl is in the earlier—as if the law knew no other broad line of demarkation among laymen, saving always the official dignities and the royal family.† And the distinction between the greater and the lesser thanes was not lost, though they were put on a level as to composition.

* *Hlaford* was the chief, "the *Loafgiver*, a name which, through a series of softenings and contractions, and with a complete forgetfulness of its primitive meaning, has settled down into the modern form of *Lord*."—Freeman's "Hist. of the Norman Conquest," i., 52.

* Is not the word sithcundman properly descriptive of his dependence on a lord, from the Saxon verb *sithian*, to follow?

† "That the thane, at least originally, was a military follower, a holder by military service, seems certain; though in later times the rank seems to have been enjoyed by all great land-holders, as the natural concomitant of possession to a certain value. By Mercian law, he appears as a 'twelfhynde' man, his 'wer' being 1900 shillings. That this dignity ceased from being exclusively of a military character is evident from numerous passages in the laws, where thanes are mentioned in a judicial capacity, and as civil officers."—Thorpe's "Glossary to Ancient Laws," voc. Thegen.

Meantime the composition for an earl, whether we confine that word to office or suppose that it extended to the wealthiest land-holders, was far higher in the later period than that for a thane, as was also his heriot when that came into use. The heriot of the king's thane was above that of what was called a medial thane, or mesne vassal, the sithcundman, or syxhynder, as I apprehend, of an earlier style.

In the laws of the Continental Saxons we find the rank corresponding to the *Eorlcunde* of our own country denominated *Edelingi* or noble, as opposed to the *Frilingi* or ordinary, freemen. This appellation was not lost in England, and was perhaps sometimes applied to nobles; but we find it generally reserved for the royal family. *Ethel* or noble, sometimes contracted, forms, as is well known, the peculiar prefix to the names of our Anglo-Saxon royal house. And the word *Atheling* was used, not as in Germany for a noble, but a prince; and his composition was not only above that of a thane, but of an alderman. He ranked as an archbishop in this respect, the alderman as a bishop. It is necessary to mention this, lest, in speaking of the words *eorl* and *ceorl* as originally distributive, I should seem to have forgotten the distinctive superiority of the royal family. But whether this had always been the case I am not prepared to determine. The aim of the later kings, I mean after Alfred, was to carry the monarchical principle as high as the temper of the nation would permit. Hence they prefer to the name of king, which was associated in all the Germanic nations with a limited power, the more indefinite appellations of imperator and basileus. And the latter of these they borrowed from the Byzantine court, liking it rather better than the other, not merely out of the pompous affectation characteristic of their style in that period, but because, being less intelligible, it served to strike more awe, and also probably because the title of Western emperor seemed to be already appropriated in Germany. It was natural that they would endeavor to enhance the superiority of all athelings above the surrounding nobility.

In Doomsday-book, which is a record of the state of Anglo-Saxon orders of society under Edward the Confessor, we find new denominations. The word *Ceorl* does not occur, but is represented by *Villanus*, which is also distinguishable. And this word is frequently used in the first Anglo-Norman reigns as the equivalent of ceorl. No one ought to doubt that they expressed the same persons. In Doomsday-book the number of *Villani* is 108,000. We find also a very numerous class, above 82,000, styled *Bordarii*, who must have been also Ceorls, distinguished by some legal difference, some peculiarity of service or tenure, well understood at the time. A small number are denominated *Coscetz*, or *Cosceti*. There are also several minor denominations in Doomsday, all of which, as they do not denote slaves, and certainly not thanes, must have been varieties of the Ceorl kind. The most frequent of these appellations is *Cotarii*.

But, besides these peasants, there are two appellations which it is less easy, though it would be more important, to define. These are the *Liberi Homines* and the *Socmanni*. Of the former there are in Doomsday-book about 12,300; of the latter, about 23,000; forming together about one-eighth of the whole population, that is, of male adults. It is remarkable that in Norfolk alone we have 4487 *liberi homines* and 4588 socmen—the whole enumerated population being 27,087. But in Suffolk, out of a population of 20,491, we find 7470 *liberi homines*, with 1060 socmen. Thus these two counties contained almost all the *liberi homines* of the kingdom. In Lincolnshire, on the other hand, where 11,504 are returned as socmen, the word *liber homo* does not occur. These Lincolnshire socmen are not, as usual in other counties, mentioned among occupiers of the demesne lands, but mingled with the villeins and bordars; sometimes not standing first in the enumeration, so as to show that, in one county, they were both a more numerous and more subordinate class than in the rest of the realm.

The concise distinction between what we should call freehold and copyhold is made by the forms of entering each manor throughout Doomsday-book. *Liberi homines* invariably, and *socmen*, I believe, except in Lincolnshire, occupied the one, *villani* and *bordarii* the other. Hence *liberum tenementum* and *villenagium*. What then, in Anglo-Saxon language, was the *kind* of the two former classes? We must, upon the whole, I conceive, take them for ceorls more fortunate than the rest, who had acquired some freehold land, or to whose ancestors possibly it had been allotted in the original settlement. It indicates a remarkable variety in the condition of these East-Anglian counties, Norfolk and Suffolk, and a more diffused freedom in their inhabitants. The population, it must strike us, was greatly higher, relatively to their size, than in any other part of England; and the multitude of small

manors and of parish churches, which still continue, bespeaks this progress. The *socmen*, as well as the *liberi homines*, in whose condition there may have been little difference, except in Lincolnshire, where we have seen that, for whatever cause, those denominated socmen were little, if at all, better than the *villani*, were all *commended;* they had all some lord, though bearing to him a relation neither of fief nor of villenage; they could in general, though with some exceptions, alienate their lands at pleasure; it has been thought that they might pay some small rent in acknowledgment of commendation; but the one class undoubtedly, and probably the other, were freeholders in every legal sense of the word, holding by that ancient and respectable tenure, free and common socage, or in a manner at least analogous to it. Though socmen are chiefly mentioned in the Danelage, other obscure denominations of occupiers occur in Wessex and Mercia, which seem to have denoted a similar class.

It may be remarked here that many of our modern writers draw too unfavorable a picture of the condition of the Anglo-Saxon ceorl. Few, indeed, fall into the capital mistake of Mr. Sharon Turner, by speaking of him as legally in servitude, like the villein of Bracton's age. But we often find a tendency to consider him as in a very uncomfortable condition, little caring "to what lion's paw he might fall," as Bolingbroke said in 1745, and treated by his lord as a miserable dependent. Half a century since, in the days of Sir William Jones, Granville Sharp, and Major Cartwright, the Anglo-Saxon constitution was built on universal suffrage; every man in his tithing a partaker of sovereignty, and sending from his rood of land an annual representative to the witenagemot. Such a theory could not stand the first glimmerings of historical knowledge in a mind tolerably sound. But while we absolutely deny political privileges of this kind to the ceorl, we need not assert his life to have been miserable. He had very definite legal rights, and acknowledged capacities of acquiring more; that he was sometimes exposed to oppression is probable enough: but, in reality, the records of all kinds that have descended to us do not speak in such strong language of this as we may read in those of the Continent. We have no insurrection of the ceorls, no outrages by themselves, no atrocious punishment by their masters, as in Normandy. Perhaps we are a little too much struck by their obligation to reside on the lands which they cultivated; the term *ascriptus glebæ* denotes, in our apprehension, an ignoble servitude. It is, of course, inconsistent with our modern equality of rights; but we are to remember that he who deserted his land, and consequently his lord, did so in order to become a thief. *Hlafordles* men, of whom we read so much, were invariably of this character—men without land, lord, or law, who lived upon what they could take. For the sake of protecting the honest ceorl from such men, as well as of protecting the lord in what, if property be regarded at all, must be protected—his rights to services legally due—it was necessary to restrain the cultivator from quitting his land. Exceptions to this might occur, as we find among the *liberi homines* and others in Doomsday; but it was the general rule. We might also ask whether a lessee for years at present is not in one sense *ascriptus glebæ?* It is true that he may go wherever he will, and, if he continue to pay his rent and perform his covenants, no more can be said. But if he does not this, the law will follow his person, and, though it can not force him to return, will make it by no means his interest to desert the premises. Such remedies as the law now furnishes were not in the power of the Saxon landlord; but all that any lord could desire was to have the services performed, or to receive a compensation for them.

IV. THE WITENAGEMOT.

The best explanation of the history of the *Witenagemot* has been given by Mr. Freeman in his "Hist. of the Norman Conquest" (i., 100 seq.). Mr. Freeman points out that every freeman had a theoretical right to attend the assembly of the kingdom, as well as the assembly of the shire, but such a right of attendance became, of course, purely nugatory. "The mass of the people could not attend, they would not care to attend, they would find themselves of no account if they did attend. They would, therefore, without any formal abrogation of their right, gradually cease from attending. The idea of representation had not yet arisen; those who did not appear in person, had no means of appearing by deputy; of election or delegation there is not the slightest trace, though it might often happen that those who staid away might feel that their rich or official neighbors who went would attend to their wishes, and would fairly act in their interests. By this process, an originally democratic assembly, without any formal exclusion of any class of its members, gradually shrunk up into an aristocratic assembly. * * * * Thus an assembly of

all the freemen of Wessex, when those freemen could not attend personally, and when they had no means of attending by representatives, gradually changed into an assembly attended by few or none but the king's thegns. The great officers of church and state, earldormen, bishops, abbots, would attend; the ordinary thegns would attend more laxly, but still in considerable numbers; the king would preside; a few leading men would discuss; the general mass of the thegns, whether they formally voted or not, would make their approval or disapproval practically felt; no doubt the form still remained of at least announcing the resolutions taken to any of the ordinary freemen, whom curiosity had drawn to the spot; most likely the form still remained of demanding their ceremonial assent, though without any fear that the habitual 'yea, yea,' would ever be exchanged for 'nay, nay.' It is thus that, in the absence of representation, a democratic franchise, as applied to a large country, gradually becomes unreal or delusive. * * * *

"As to the constitution of these great councils in any English kingdom, our information is of the vaguest kind. The members are always described in the loosest way. We find the witan constantly assembling, constantly passing laws, but we find no law prescribing or defining the constitution of the assembly itself. We find no trace of representation or election; we find no trace of any property qualification; we find no trace of nomination by the crown, except in so far as all the great officers of the court and the kingdom were constantly present. On the other hand, we have seen that all the leading men, earldormen, bishops, abbots, and a considerable body of other thegns, did attend; we have seen that the people as a body were in some way associated with the legislative acts of their chiefs, that those acts were in some sort the acts of the people themselves, to which they had themselves assented, not merely the edicts of superiors which they had to obey. We have seen that, on some particular occasions, some classes at least of the people did actually take a part in the proceedings of the national council; thus the citizens of London are more than once recorded to have taken a share in the election of kings. No theory that I know of will explain all these phenomena, except that which I have just tried to draw out. This is, that every freeman had an abstract right to be present, but that any actual participation in the proceedings of the assembly had, gradually and imperceptibly, come to be confined to the leading men, to the king's thegns, strengthened, under peculiarly favorable circumstances, by the presence of exceptional classes of freemen, like the London citizens."

V. TRIAL BY JURY.

The following note relates to the subsequent history of trial by jury.

In the "Leges Henrici Primi," a treatise compiled probably early in the reign of Henry II. [Stubbs], and not intended to pass for legislative,* are numerous statements as to the usual course of procedure, especially on criminal charges. In this treatise we find no allusion to juries; the trial was either before the Court of the Hundred or that of the territorial judge, assisted by his free vassals. But we do find the great original principle, trial by peers, and, as it is called, *per pais;* that is, in the presence of the country, opposed to a distant and unknown jurisdiction—a principle truly derived from Saxon, though consonant also to Norman law, dear to both nations, and guaranteed to both, as it was claimed by both, in the 29th section of Magna Charta. "Unusquisque per pares suos judicandus est, et ejusdem provincie, peregrina autem judicia modis omnibus submovemus." (Leges H. I., c. 31).

As the court had no function but to see that the formalities of the combat, the ordeal, or the compurgation were duly regarded, and to observe whether the party succeeded or succumbed, no oath from them, nor any reduction of their numbers, could be required. But the law of Normandy had already established the inquest by sworn recognitors, twelve or twenty-four in number, who were supposed to be well acquainted with the facts; and this in civil as well as criminal proceedings. We have seen an instance of it, not long before the Conquest, among ourselves, in the history of the monk of Ramsey. [See p. 393.] It was in the development of this amelioration in civil justice that we find instances during this period where a small number have been chosen from the County Court and sworn to declare the truth, when the judge might suspect the partiality or ignorance of the entire body. Thus in suits for the recovery of property the public mind was gradually accustomed to see the

* It may be here observed, that, in all probability, the title "Leges Henrici Primi" has been continued to the whole book from the first two chapters, which do really contain laws of Henry I., namely, his general charter, and that to the city of London. A similar inadvertence has caused the well-known book commonly ascribed to Thomas à Kempis to be called "De Imitatione Christi," which is merely the title of the first chapter.

jurisdiction of the freeholders in their court transferred to a more select number of sworn and well-informed men. But this was not yet a matter of right, nor even probably of very common usage. It was in this state of things that Henry II. brought in the *Assize of Novel Disseizin*.

This gave an alternative to the tenant on a suit for the recovery of land, if he chose not to risk the combat, of putting himself on the assize; that is, of being tried by four knights summoned by the sheriff and twelve more selected by them, forming the sixteen sworn recognitors, as they were called, by whose verdict the cause was determined. This may be regarded as the first step to trial by jury in civil cases. An assize of novel disseizin was always held in the King's Court or that of the justices itinerant, and not before the County or Hundred, whose jurisdiction began in consequence rapidly to decline.

Changes not less important were effected in criminal processes during the second part of the Norman period, which we consider as terminating with the accession of Edward I. Henry II. abolished the ancient privilege of compurgation by the oaths of friends, the manifest fountain of unblushing perjury; though it long afterwards was preserved in London and in boroughs by some exemption which does not appear. This, however, left the favorite, or at least the ancient and English, mode of defense by chewing consecrated bread, handling hot iron, and other tricks called ordeals. But near the beginning of Henry III.'s reign the Church, grown wiser and more fond of her system of laws, abolished all kinds of ordeal in the fourth Lateran council. The combat remained; but it was not applicable unless an injured prosecutor or appellant came forward to demand it. In cases where a party was only charged on vehement suspicion of a crime, it was necessary to find a substitute for the forbidden superstition. He might be compelled, by a statute of Henry II., to abjure the realm. A writ of 8 Henry III. directs that those against whom the suspicions were very strong should be kept in safe custody. But this was absolutely incompatible with English liberty and with Magna Charta. "No further enactment," says Sir F. Palgrave, "was made; and the usages which already prevailed led to a general adoption of the proceedings which had hitherto existed as a privilege or as a favor—that is to say, of proving or disproving the testimony of the first set of inquest-men by the testimony of a second array—and the individual accused by the appeal, or presented by the general opinion of the hundred, was allowed to defend himself by the particular testimony of the hundred to which he belonged. For this purpose another inquest was impanelled, sometimes composed of twelve persons named from the 'visne' and three from each of the adjoining townships; and sometimes the very same jurymen who had presented the offense might, if the culprit thought fit, be examined a second time, as the witnesses or inquest of the points in issue. But it seems worthy of remark that 'trial by inquest' in criminal cases never seems to have been introduced except into those courts which acted by the king's writ or commission. The presentment or declaration of those officers which fell within the cognizance of the hundred jury or the leet jury, the representatives of the ancient échevins, was final and conclusive; no traverse, or trial by a second jury, in the nature of a petty jury, being allowed" (p. 269).

Thus trial by a petty jury upon criminal charges came in; it is of the reign of Henry III., and not earlier. And it is to be remarked, as a confirmation of this view, that no one was compellable to plead; that is, the inquest was to be of his own choice. But if he declined to endure it he was remanded to prison, and treated with a severity which the statute of Westminster 1, in the third year of Edward I., calls *peine forte et dure*: extended afterwards, by a cruel interpretation, to that atrocious punishment on those who refused to stand a trial, commonly in order to preserve their lands from forfeiture, which was not taken away by law till the last century.

Thus was trial by jury established, both in real actions, or suits affecting property in land, and in criminal procedure, the former preceding by a little the latter. But a new question arises as to the province of these early juries; and the view lately taken is very different from that which has been commonly received.

"Trial by jury," says Sir F. Palgrave, "according to the old English law, was a proceeding essentially different from the modern tribunal, still bearing the same name, by which it has been replaced. Jurymen in the present day are triers of the issue; they are individuals who found their opinion upon the evidence, whether oral or written, adduced before them; and the verdict delivered by them is their declaration of the judgment which they have formed. But the ancient jurymen were not impanelled to examine into the credibility of the evidence: the question was not discussed and argued before them; they, the jurymen, were the witnesses

themselves, and the verdict was substantially the examination of these witnesses, who of their own knowledge, and without the aid of other testimony, afforded their evidence respecting the facts in question to the best of their belief. In its primitive form a trial by jury was therefore only a trial by witnesses; and jurymen were distinguished from any other witnesses only by customs which imposed upon them the obligation of an oath and regulated their number.

"I find it necessary to introduce this description of the ancient 'Trial by Jury,' because, unless the real functions of the original jurymen be distinctly presented to the reader, his familiar knowledge of the existing course of jurisprudence will lead to the most erroneous conclusions. Many of those who have descanted upon the excellence of our venerated national franchise seem to have supposed that it has descended to us unchanged from the days of Alfred; and the patriot who claims the jury as the 'judgment by his peers' secured by Magna Charta can never have suspected how distinctly the trial is resolved into a mere examination of witnesses" (i. 243).

This theory is sustained by a great display of erudition, which fully establishes that the jurors had such a knowledge, however acquired, of the facts as enabled them to render a verdict without hearing any other testimony in open court than that of the parties themselves, fortified, if it might be, by written documents adduced. Hence the knights of the grand assize are called *Recognitors*, a name often given to others sworn on an inquest.

At what precise period witnesses distinct from the jury themselves, and who had no voice in the verdict, first began to be regularly summoned, can not be ascertained. The first trace of such a practice occurs in the 23d year of Edward III., and had probably been creeping in previously. That it was perfectly established by the middle of the 15th century we have clear evidence from Fortescue's treatise 'De Landibus Legum Angliæ' (c. 26), written soon after 1450:

"Twelve good and true men being sworn as in the manner above related, legally qualified—that is, having, over and besides their movable possessions, in land sufficient (as was said) wherewith to maintain their rank and station—neither suspected by nor at variance with either of the parties; all of the neighborhood; there shall be read to them in English by the court the record and nature of the plea at length which is depending between the parties; and the issue thereupon shall be plainly laid before them, concerning the truth of which those who are so sworn are to certify the court; which done, each of the parties, by themselves or their counsel, in presence of the court, shall declare and lay open to the jury all and singular the matters and evidences whereby they think they may be able to inform the court concerning the truth of the point in question; after which each of the parties has a liberty to produce before the court all such witnesses as they please, or can get to appear on their behalf, who, being charged upon their oaths, shall give in evidence all that they know touching the truth of the fact concerning which the parties are at issue. And if necessity so require, the witnesses may be heard and examined apart, till they shall have deposed all that they have to give in evidence, so that what the one has declared shall not inform or induce another witness of the same side to give his evidence in the same words, or to the very same effect. The whole of the evidence being gone through, the jurors shall confer together at their pleasure, as they shall think most convenient, upon the truth of the issue before them, with as much deliberation and leisure as they can well desire; being all the while in the keeping of an officer of the court, in a place assigned them for that purpose, lest any one should attempt by indirect methods to influence them as to their opinion, which they are to give in to the court. Lastly, they are to return into court and certify the justices upon the truth of the issue so joined in the presence of the parties (if they please to be present), particularly the person who is plaintiff in the cause: what the jurors shall so certify, in the laws of England, is called the verdict" (c. 26).

But personal knowledge of a case continued to be allowed in a juror, who was even required to act upon it; and it was not till a comparatively recent period that the complete separation of the functions of juryman and witness was established.

PART II.

THE ANGLO-NORMAN CONSTITUTION.

§ 1. The Anglo-Norman Constitution. Causes of the Conquest. § 2. Policy and Character of William. § 3. His Tyranny. § 4. Introduction of Feudal Services. § 5. Difference between the Feudal Governments of France and England. Causes of the great Power of the first Norman Kings. § 6. Arbitrary Character of their Government. § 7. General Taxes. § 8. Right of Legislation. Great Council. § 9. Laws and Charters of the Norman Kings. § 10. Resistance of the Barons to John. Magna Charta. Its principal Articles. § 11. Constitution under Henry III. § 12. Limitations of the Prerogative. § 13. Judicial System of the Anglo-Normans. Curia Regis, Exchequer, Justices of Assize, Common Pleas. § 14. Establishment of the Common Law. § 15. Hereditary Right of the Crown established. § 16. Remarks on the Limitation of Aristocratical Privileges in England.

§ 1. IT is deemed by William of Malmsbury an extraordinary work of Providence that the English should have given up all for lost after the battle of Hastings, where only a small though brave army had perished. It was, indeed, the conquest of a great kingdom by the prince of a single province —an event not easily paralleled, where the vanquished were little, if at all, less courageous than their enemies, and where no domestic factions exposed the country to an invader. Yet William was so advantageously situated that his success seems neither unaccountable nor any matter of discredit to the English nation. The heir of the house of Cerdic had been already set aside at the election of Harold; and his youth, joined to a mediocrity of understanding, which excited neither esteem nor fear, gave no encouragement to the scheme of placing him upon the throne in those moments of imminent peril which followed the battle of Hastings. England was peculiarly destitute of great men. The weak reigns of Ethelred and Edward had rendered the Government a mere oligarchy, and reduced the nobility into the state of retainers to a few leading houses, the representatives of which were every way unequal to meet such an enemy as the Duke of Normandy. If, indeed, the concurrent testimony of historians does not exaggerate his forces, it may be doubted whether England possessed military resources sufficient to have resisted so numerous and well-appointed an army.

This forlorn state of the country induced, if it did not justify, the measure of tendering the crown to William, which he had a pretext or title to claim, arising from the intentions, perhaps the promise, perhaps even the testament of Edward,

which had more weight in those times than it deserved, and was at least better than the naked title of conquest. And this, supported by an oath exactly similar to that taken by the Anglo-Saxon kings, and by the assent of the multitude, English as well as Normans, on the day of his coronation, gave as much appearance of a regular succession as the circumstances of the times would permit. Those who yielded to such circumstances could not foresee, and were unwilling to anticipate, the bitterness of that servitude which William and his Norman followers were to bring upon their country.

§ 2. The commencement of his administration was tolerably equitable. Though many confiscations took place, in order to gratify the Norman army, yet the mass of property was left in the hands of its former possessors. Offices of high trust were bestowed upon Englishmen, even upon those whose family renown might have raised the most aspiring thoughts. But, partly through the insolence and injustice of William's Norman vassals, partly through the suspiciousness natural to a man conscious of having overturned the national government, his yoke soon became more heavy. The English were oppressed; they rebelled, were subdued, and oppressed again. All their risings were without concert, and desperate; they wanted men fit to head them, and fortresses to sustain their revolt. After a very few years they sank in despair, and yielded for a century to the indignities of a comparatively small body of strangers without a single tumult. So possible is it for a nation to be kept in permanent servitude, even without losing its reputation for individual courage, or its desire of freedom!

The tyranny of William displayed less of passion or insolence than of that indifference about human suffering which distinguishes a cold and far-sighted statesman. Impressed by the frequent risings of the English at the commencement of his reign, and by the recollection, as one historian observes, that the mild government of Canute had only ended in the expulsion of the Danish line, he formed the scheme of riveting such fetters upon the conquered nation, that all resistance should become impracticable. Those who had obtained honorable offices were successively deprived of them; even the bishops and abbots of English birth were deposed;[1] a

[1] This was done with the concurrence and sanction of the pope, Alexander II., so that the stretch of power was by Rome rather than by William. It must pass for a gross violation of ecclesiastical as well as national rights, and Lanfranc can not be reckoned, notwithstanding his distinguished name, as any better than an intrusive bishop. He showed his arrogant scorn of the English nation in another and rather a singular manner. They were excessively proud of their national saints, some of

stretch of power very singular in that age. Morcar, one of the most illustrious English, suffered perpetual imprisonment. Waltheoff, a man of equally conspicuous birth, lost his head upon the scaffold by a very harsh, if not iniquitous, sentence. It was so rare in those times to inflict judicially any capital punishment upon persons of such rank, that his death seems to have produced more indignation and despair in England than any single circumstance. The name of Englishman was turned into a reproach. None of that race for a hundred years were raised to any dignity in the State or Church.[2] Several English nobles, desperate of the fortunes of their country, sought refuge in the Court of Constantinople, and approved their valor in the wars of Alexius against another Norman conqueror, scarcely less celebrated than their own, Robert Guiscard. Under the name of Varangians, those true and faithful supporters of the Byzantine Empire preserved to its dissolution their ancient Saxon idiom.[3]

An extensive spoliation of property accompanied these revolutions. It appears by the great national survey of Doomsday-book, completed near the close of the Conqueror's reign, that the tenants in capite of the crown were generally foreigners. Undoubtedly there were a few left in almost every county who still enjoyed the estates which they held under Edward the Confessor, free from any superiority but that of the crown, and were denominated, as in former times, the king's thanes. Cospatric, son, perhaps, of one of that name who had possessed the earldom of Northumberland, held forty-one manors in Yorkshire, though many of them are stated in Doomsday to be waste. But inferior freeholders were much less disturbed in their estates than the higher class. It is manifest, by running the eye over some pages of the list of mesne tenants at the time of the survey, how mistaken is the supposition that few of English birth held entire manors. They form a large proportion of nearly 8000 *mesne* tenants.

whom were little known, and whose barbarous names disgusted Italian ears. The Norman bishops, and the primate especially, set themselves to disparage, and in fact to dispossess, St. Aldhelm, St. Elfig, and, for aught we know, St. Swithin, St. Werburg, St. Ebb, and St. Alphage; names, it must be owned,

"That would have made Quintilian stare and gasp."

We may judge what the eminent native of Pavia thought of such a hagiology. The English Church found herself, as it were, with an attainted peerage. But the calendar withstood these innovations.

[2] Becket is said to have been the first Englishman who reached any considerable dignity.

[3] No writer, except perhaps the Saxon Chronicler, is so full of William's tyranny as Ordericus Vitalis. Ordericus was an Englishman, but passed at ten years old, A.D. 1084, into Normandy, where he became professed in the monastery of Ea.

And we may presume that they were in a very much greater proportion among the "liberi homines," who held lands, subject only to free services, seldom or never very burdensome. It may be added that many Normans, as we learn from history, married English heiresses, rendered so frequently, no doubt, by the violent deaths of their fathers and brothers, but still transmitting ancient rights, as well as native blood, to their posterity.

This might induce us to suspect that, great as the spoliation must appear in modern times, and almost completely as the nation was excluded from civil power in the Commonwealth, there is some exaggeration in the language of those writers who represent them as universally reduced to a state of penury and servitude. But, whatever may have been the legal condition of the English mesne tenant, by knight-service or socage—for the case of villeins is of course not here considered during the first two Norman reigns—it seems evident that he was protected by the charter of Henry I. in the hereditary possession of his lands, subject only to a "lawful and just relief towards his lord;" for this charter is addressed to all the liege men of the crown, "French and English," and purports to abolish all the evil customs by which the kingdom had been oppressed, extending to the tenants of the barons as well as those of the crown.

The vast extent of the Norman estates in capite is apt to deceive us. In reading of a baron who held forty or fifty or one hundred manors, we are prone to fancy his wealth something like what a similar estate would produce at this day. But if we look at the next words, we shall continually find that some one else held of him; and this was a holding by knight's service, subject to feudal incidents, no doubt, but not leaving the seigniory very lucrative, or giving any right of possessory ownership over the land. The real possessions of the tenant of a manor, whether holding in chief or not, consisted in the demesne lands, the produce of which he obtained without cost by the labor of the villeins, and in whatever other payments they might be bound to make in money or kind. It will be remembered, what has been more than once inculcated, that at this time the villani and bordarii, that is, ceorls, were not, like the villeins of a later time, destitute of rights in their property; their condition was tending to the lower stage, and, with a Norman lord, they were in much danger of oppression; but they were "law-worthy" —they had a civil *status* (to pass from one technical style to another) for a century after the Conquest.

Yet I would not extenuate the calamities of this great revolution, true though it be that much good was brought out of them, and that we owe no trifling part of what inspires self-esteem to the Norman element of our population and our polity. England passed under the yoke — she endured the arrogance of foreign conquerors—her children, even though their loss in revenue may have been exaggerated, and still it was enormous, became a low race, not called to the councils of their sovereign, not sharing his trust or his bounty. They were in a far different condition from the provincial Romans after the conquest of Gaul, even if, which is hardly possible to determine, their actual deprivation of lands should have been less extensive. For not only they did not for several reigns occupy the honorable stations which sometimes fell to the lot of the Roman subject of Clovis or Alaric, but they had a great deal more freedom and importance to lose. Nor had they a protecting Church to mitigate barbarous superiority; their bishops were degraded and in exile; the footstep of the invader was at their altars; their monasteries were plundered, and the native monks insulted. Rome herself looked with little favor on a Church which had preserved some measure of independence: strange contrast to the triumphant episcopate of the Merovingian kings![4]

§ 3. Besides the severities exercised upon the English after every insurrection, two instances of William's unsparing cruelty are well known—the devastation of Yorkshire and of the New Forest. In the former, which had the tyrant's plea, necessity, for its pretext, an invasion being threatened from Denmark, the whole country between the Tyne and the Humber was laid so desolate that for nine years afterwards there was not an inhabited village, and hardly an inhabitant left—the wasting of this district having been followed by a famine which swept away the whole population. That of the New Forest, though undoubtedly less calamitous in its effects, seems more monstrous from the frivolousness of the cause. He afforested several other tracts. And these favorite demesnes of the Norman kings were protected by a system of iniquitous and cruel regulations, called the Forest Laws, which it became afterwards a great object with the assertors of liberty to correct. The penalty for killing a stag or a boar was loss of eyes; for William loved the great game, says the Saxon Chronicle, as if he had been their father.

[4] The oppression of the English during the first reigns after the Conquest is fully described by the Norman historians themselves, as well as by the Saxon Chronicle. Their testimonies are well collected by M. Thierry in the second volume of his valuable history.

A more general proof of the ruinous oppression of William the Conqueror may be deduced from the comparative condition of the English towns in the reign of Edward the Confessor and at the compilation of Doomsday. At the former epoch, there were in York 1607 inhabited houses; at the latter, 967: at the former, there were in Oxford 721; at the latter, 243: of 172 houses in Dorchester, 100 were destroyed; of 243 in Derby, 103; of 487 in Chester, 205. Some other towns had suffered less, but scarcely any one fails to exhibit marks of a decayed population.[5]

The demesne lands of the crown, extensive and scattered over every county, were abundantly sufficient to support its dignity and magnificence;[6] and William, far from wasting this revenue by prodigal grants, took care to let them at the highest rate to farm, little caring how much the cultivators were racked by his tenants. Yet his exactions, both feudal and in the way of tallage, from his burgesses and the tenants of his vassals, were almost as violent as his confiscations. No source of income was neglected by him, or, indeed, by his successors, however trifling, unjust, or unreasonable. His revenues, if we could trust Ordericus Vitalis, amounted to £1060 a day. This, in mere weight of silver, would be equal to nearly £1,200,000 a year at present. But the arithmetical statements of these writers are not implicitly to be relied upon. He left at his death a treasure of £60,000, which, in conformity to his dying request, his successor distributed among the Church and poor of the kingdom, as a feeble expiation of the crimes by which it had been accumulated; an act of disinterestedness which seems to prove that Rufus, amidst all his vices, was not destitute of better feelings than historians have ascribed to him. It might appear that William had little use for his extorted wealth. By the feudal constitution, as established during his reign, he commanded the service of a vast army at its own expense, either for domestic or Continental warfare. But this was not sufficient for his purpose; like other tyrants, he put greater trust in mercenary obedience. Some of his predecessors had kept bodies of Danish troops in pay; partly to be secure against their hostility, partly from the convenience of a regular army, and the love which princes bear to it. But William carried this to a much greater length. He had always stipendiary soldiers at his command. Indeed, his army at the Conquest

[5] The population recorded in Doomsday is about 283,000; which, in round numbers, allowing for women and children, may be called about a million.

[6] They consisted of 1422 manors.

could not have been swollen to such numbers by any other means. They were drawn, by the allurement of high pay, not from France and Brittany alone, but Flanders, Germany, and even Spain. When Canute of Denmark threatened an invasion in 1085, William, too conscious of his own tyranny to use the arms of his English subjects, collected a mercenary force so vast, that men wondered, says the Saxon Chronicle, how the country could maintain it. This he quartered upon the people, according to the proportion of their estates.

§ 4. Whatever may be thought of the Anglo-Saxon tenures, it is certain that those of the feudal system were thoroughly established in England under the Conqueror. It has been observed, in another part of this work, that the rights, or feudal incidents, of wardship and marriage were more common in England and Normandy than in the rest of France. They certainly did not exist in the former before the Conquest; but whether they were ancient customs of the latter can not be ascertained, unless we had more incontestable records of its early jurisprudence. There appears, however, reason to think that the seizure of the lands in wardship, the selling of the heiress in marriage, were originally deemed rather acts of violence than conformable to law. For Henry I.'s charter expressly promises that the mother, or next of kin, shall have the custody of the lands as well as person of the heir. And as the charter of Henry II. refers to and confirms that of his grandfather, it seems to follow that what is called guardianship in chivalry had not yet been established. At least it is not till the assize of Clarendon, confirmed at Northampton in 1176, that the custody of the heir is clearly reserved to the lord. With respect to the right of consenting to the marriage of a female vassal, it seems to have been, as I have elsewhere observed, pretty general in feudal tenures. But the sale of her person in marriage, or the exaction of a sum of money in lieu of this scandalous tyranny, was only the law of England, and was not, perhaps, fully authorized as such till the statute of Merton, in 1236.

One innovation made by William upon the feudal law is very deserving of attention. By the leading principle of feuds, an oath of fealty was due from the vassal to the lord of whom he immediately held his land, and to no other. The King of France, long after this period, had no feudal, and scarcely any royal authority over the tenants of his own vassals. But William received at Salisbury, in 1085, the fealty of all land-holders in England, both those who held in chief and their tenants; thus breaking in upon the feudal compact

in its most essential attribute, the exclusive dependence of a vassal upon his lord. And this may be reckoned among the several causes which prevented the Continental notions of independence upon the crown from ever taking root among the English aristocracy.

§ 5. The system of feudal policy, though derived to England from a French source, bore a very different appearance in the two countries. France, for about two centuries after the house of Capet had usurped the throne of Charlemagne's posterity, could hardly be deemed a regular confederacy, much less an entire monarchy. But in England a government feudal, indeed, in its form, but arbitrary in its exercise, not only maintained subordination, but almost extinguished liberty. Several causes seem to have conspired towards this radical difference. In the first place, a kingdom comparatively small is much more easily kept under control than one of vast extent. And the fiefs of Anglo-Norman barons after the Conquest were far less considerable, even relatively to the size of the two countries, than those of France. The Earl of Chester held, indeed, almost all that county;[7] the Earl of Shrewsbury nearly the whole of Salop. But these domains bore no comparison with the dukedom of Guienne, or the county of Toulouse. In general, the lordships of William's barons, whether this were owing to policy or accident, were exceedingly dispersed. Robert, earl of Moreton, for example, the most richly endowed of his followers, enjoyed 248 manors in Cornwall, 54 in Sussex, 196 in Yorkshire, 99 in Northamptonshire, besides many in other counties. Estates so disjoined, however immense in their aggregate, were ill calculated for supporting a rebellion. It is observed by Madox that the knight's fees of almost every barony were scattered over various counties.

In the next place, these baronial fiefs were held under an actual derivation from the crown. The great vassals of France had usurped their dominions before the accession of Hugh Capet, and barely submitted to his nominal sovereignty. They never intended to yield the feudal tributes of relief and aid, nor did some of them even acknowledge the supremacy of his royal jurisdiction. But the Conqueror and

[7] This was, upon the whole, more like a great French fief than any English earldom. Hugh de Abrincis, nephew of William I., had barons of his own, one of whom held forty-six and another thirty manors. Chester was first called a county-palatine under Henry II.; but it previously possessed all regalian rights of jurisdiction. After the forfeitures of the house of Montgomery, it acquired all the country between the Mersey and Ribble. Several eminent men inherited the earldom; but upon the death of the most distinguished, Ranulf, in 1232, it fell into a female line, and soon escheated to the crown.

his successors imposed what conditions they would upon a set of barons who owed all to their grants; and as mankind's notions of right are generally founded upon prescriptions, these peers grew accustomed to endure many burdens, reluctantly indeed, but without that feeling of injury which would have resisted an attempt to impose them upon the vassals of the French crown. For the same reasons the barons of England were regularly summoned to the great council; and by their attendance in it, and concurrence in the measures which were there resolved upon, a compactness and unity of interests was given to the monarchy which was entirely wanting in that of France.

We may add to the circumstances that rendered the crown powerful during the first century after the Conquest, an extreme antipathy of the native English towards their invaders. Both William Rufus and Henry I. made use of the former to strengthen themselves against the attempts of their brother Robert, though they forgot their promises to the English after attaining their object. A fact mentioned by Ordericus Vitalis illustrates the advantage which the government found in this national animosity. During the siege of Bridgenorth, a town belonging to Robert de Belesme, one of the most turbulent and powerful of the Norman barons, by Henry I. in 1102, the rest of the nobility deliberated together, and came to the conclusion that if the king could expel so distinguished a subject he would be able to treat them all as his servants. They endeavored, therefore, to bring about a treaty; but the English part of Henry's army, hating Robert de Belesme as a Norman, urged the king to proceed with the siege, which he did, and took the castle.

§ 6. Unrestrained, therefore, comparatively speaking, by the aristocratic principles which influenced other feudal countries, the administration acquired a tone of rigor and arbitrariness under William the Conqueror which, though sometimes perhaps a little mitigated, did not cease during a century and a half. For the first three reigns we must have recourse to historians whose language, though vague, and perhaps exaggerated, is too uniform and impressive to leave a doubt of the tyrannical character of the government. The intolerable exactions of tribute, the rapine of purveyance, the iniquity of royal courts, are continually in their mouths. "God sees the wretched people," says the Saxon chronicler, "most unjustly oppressed; first they are despoiled of their possessions, then butchered. This was a grievous year (1124). Whoever had any property lost it by heavy taxes and un-

just decrees." The same ancient chronicle, which appears to have been continued from time to time in the Abbey of Peterborough, frequently utters similar notes of lamentation.

From the reign of Stephen, the miseries of which are not to my immediate purpose, so far as they proceeded from anarchy and intestine war,[8] we are able to trace the character of government by existing records.[9] These, digested by the industrious Madox into his History of the Exchequer, give us far more insight into the spirit of the constitution, if we may use such a word, than all our monkish chronicles. It was not a sanguinary despotism. Henry II. was a prince of remarkable clemency; and none of the Conqueror's successors were as grossly tyrannical as himself. But the system of rapacious extortion from their subjects prevailed to a degree which we should rather expect to find among Eastern slaves than that high-spirited race of Normandy whose renown then filled Europe and Asia. The right of wardship was abused by selling the heir and his land to the highest bidder. That of marriage was carried to a still grosser excess. The kings of France, indeed, claimed the prerogative of forbidding the marriage of their vassals' daughters to such persons as they thought unfriendly or dangerous to themselves; but I am not aware that they ever compelled them to marry, much less that they turned this attribute of sovereignty into a means of revenue. But in England women, and even men, simply as tenants-in-chief, and not as wards, fined to the crown for leave to marry whom they would, or not to be compelled to marry any other. Towns not only fined for original grants of franchises, but for repeated confirmations. The Jews paid exorbitant sums for every common right of mankind, for protection, for justice. In return they were sustained against their Christian debtors in demands of usury, which superstition and tyranny rendered enormous. Men fined for the king's good-will; or that he would remit his anger; or to have his mediation with their adversaries. Many fines

[8] The following simple picture of that reign from the Saxon Chronicle may be worth inserting: "The nobles and bishops built castles, and filled them with devilish and wicked men, and oppressed the people, cruelly torturing men for their money. They imposed taxes upon towns, and, when they had exhausted them of every thing, set them on fire. You might travel a day and not find one man living in a town, nor any land in cultivation. Never did the country suffer greater evils. If two or three men were seen riding up to a town, all its inhabitants left it, taking them for plunderers. And this lasted, growing worse and worse, throughout Stephen's reign. Men said openly that Christ and his saints were asleep" (p. 289).

[9] The earliest record in the Pipe-office is that which Madox, in conformity to the usage of others, cites by the name of Magnum Rotulum quinto Stephani. But in a particular dissertation subjoined to his History of the Exchequer he inclines, though not decisively, to refer this record to the reign of Henry I.

seem, as it were, imposed in sport, if we look to the cause; though their extent, and the solemnity with which they were recorded, prove the humor to have been differently relished by the two parties. Thus the Bishop of Winchester paid a tun of good wine for not reminding the king (John) to give a girdle to the Countess of Albemarle; and Robert de Vaux five best palfreys, that the same king might hold his peace about Henry Pinel's wife. Another paid four marks for leave to eat (pro licentiâ comedendi). But of all the abuses which deformed the Anglo-Norman government, none was so flagitious as the sale of judicial redress. The king, we are often told, is the fountain of justice; but in those ages it was one which gold alone could unseal. Men fined to have right done them; to sue in a certain court; to implead a certain person; to have restitution of land which they had recovered at law. From the sale of that justice which every citizen has a right to demand, it was an easy transition to withhold or deny it. Fines were received for the king's help against the adverse suitor; that is, for perversion of justice, or for delay. Sometimes they were paid by opposite parties, and, of course, for opposite ends. These were called counter-fines.[10]

§ 7. Among a people imperfectly civilized the most outrageous injustice towards individuals may pass without the slightest notice, while in matters affecting the community the powers of government are exceedingly controlled. It becomes, therefore, an important question what prerogative these Norman kings were used to exercise in raising money and in general legislation. By the prevailing feudal customs the lord was entitled to demand a pecuniary aid of his vassals in certain cases. These were, in England, to make his eldest son a knight, to marry his eldest daughter, and to ransom himself from captivity. Accordingly, when such circumstances occurred, aids were levied by the crown upon its tenants, at the rate of a mark or a pound for every knight's fee.[11] These aids, being strictly due in the prescribed cases, were taken without requiring the consent of Parliament. Escuage, which was a commutation for the personal service of military tenants in war, having rather the appearance of an indulgence than an imposition, might reasonably be levied by

[10] The most opposite instances of these exactions are well selected from Madox by Hume, Appendix II.

[11] The *reasonable aid* was fixed by the statute of Westminster 1, 3 Edw. I., c. 36, at twenty shillings for every knight's fee, and as much for every £20 value of land held by socage. The aid pour faire fitz chevaller might be raised when he entered into his fifteenth year: pour fille marier when she reached the age of seven.

the king. It was not till the charter of John that escuage became a parliamentary assessment; the custom of commuting service having then grown general, and the rate of commutation being variable.

None but military tenants could be liable for escuage; but the inferior subjects of the crown were oppressed by tallages. The demesne lands of the king, and all royal towns, were liable to tallage; an imposition far more rigorous and irregular than those which fell upon the gentry. Tallages were continually raised upon different towns during all the Norman reigns without the consent of Parliament, which neither represented them nor cared for their interests. The itinerant justices in their circuit usually set this tax. Sometimes the tallage was assessed in gross upon a town, and collected by the burgesses; sometimes individually at the judgment of the justices. There was an appeal from an excessive assessment to the barons of the Exchequer. Inferior lords might tallage their own tenants and demesne towns, though not, it seems, without the king's permission. Customs upon the import and export of merchandise, of which the prisage of wine — that is, a right of taking two casks out of each vessel — seems the most material, were immemorially exacted by the crown. There is no appearance that these originated with Parliament. Another tax, extending to all the lands of the kingdom, was Danegeld, the ship-money of those times. This name had been originally given to the tax imposed under Ethelred II., in order to raise a tribute exacted by the Danes. It was afterwards applied to a permanent contribution for the public defense against the same enemies. But after the Conquest this tax is said to have been only occasionally required; and the latest instance on record of its payment is in the 20th of Henry II. Its imposition appears to have been at the king's discretion.

§ 8. The right of general legislation was undoubtedly placed in the king, conjointly with his Great Council, or, if the expression be thought more proper, with their advice. So little opposition was found in these assemblies by the early Norman kings, that they gratified their own love of pomp, as well as the pride of their barons, by consulting them in every important business. But the limits of legislative power were extremely indefinite.[12] New laws, like new taxes, affecting the community, required the sanction of that assembly which was supposed to represent it; but there was no security for individuals against acts of prerogative which

[12] See NOTE I., "The Legislation of the Great Council."

we should justly consider as most tyrannical. Henry II., the best of these monarchs, banished from England the relations and friends of Becket, to the number of four hundred. At another time he sent over from Normandy an injunction that all the kindred of those who obeyed a papal interdict should be banished and their estates confiscated.

§ 9. The statutes of those reigns do not exhibit to us many provisions calculated to maintain public liberty on a broad and general foundation. And although the laws then enacted have not all been preserved, yet it is unlikely that any of an extensively remedial nature should have left no trace of their existence. We find, however, what has sometimes been called the Magna Charta of William the Conqueror. "We will, enjoin, and grant," says the king, "that all freemen of our kingdom shall enjoy their lands in peace, free from all tallage, and from every unjust exaction, so that nothing but their service lawfully due to us shall be demanded at their hands."[13] It is remarkable that no reference is made to this concession of William the Conqueror in any subsequent charter. A charter of Henry I., the authenticity of which is undisputed, though it contains nothing specially expressed but a remission of unreasonable reliefs, wardships, and other feudal burdens,[14] proceeds to declare that he gives his subjects the laws of Edward the Confessor, with the emendations made by his father with consent of his barons. The charter of Stephen not only confirms that of his predecessor, but adds, in fuller terms than Henry had used, an express concession of the laws and customs of Edward. Henry II. is silent about these, although he repeats the confirmation of his grandfather's charter. The people, however, had begun to look back to a more ancient standard of law. The Norman Conquest, and all that ensued upon it, had endeared the memory of their Saxon government. Its disorders were forgotten, or, rather, were less odious to a rude nation than the coercive justice

[13] This charter contains a clause—"Hoc quoque præcipio et volo ut omnes habeant et teneant legem Edwardi Regis in omnibus rebus, adanctis his quæ constitui ad utilitatem populi Anglorum." This charter seems to be fully established; it deserves to be accounted the first remedial concession by the crown; for it indicates, especially taken in connection with public history, an arbitrary exercise of royal power which neither the new nor the old subjects of the English monarchy reckoned lawful. It is also the earliest recognition of the Anglo-Saxon laws, such as they subsisted under the Confessor, and a proof both that the English were now endeavoring to raise their heads from servitude, and that the Normans had discovered some immunities from taxation, or some securities from absolute power, among the conquered people, in which they desired to participate.

[14] The accession of Henry inspired hopes into the English nation which were not well realized. His marriage with Matilda, "of the rightful English kin," is mentioned with apparent pleasure by the Saxon chronicler under the year 1100.

by which they were afterwards restrained. Hence it became the favorite cry to demand the laws of Edward the Confessor; and the Normans themselves, as they grew dissatisfied with the royal administration, fell into these English sentiments.[18] But what these laws were, or more properly, perhaps, these customs subsisting in the Confessor's age, was not very distinctly understood. So far, however, was clear, that the rigorous feudal servitude, the weighty tributes upon poorer freemen, had never prevailed before the Conquest. In claiming the laws of Edward the Confessor, our ancestors meant but the redress of grievances which tradition told them had not always existed.

It is highly probable, independently of the evidence supplied by the charters of Henry I. and his two successors, that a sense of oppression had long been stimulating the subjects of so arbitrary a government before they gave any demonstrations of it sufficiently palpable to find a place in history. But there are certainly no instances of rebellion, or even, as far as we know, of a constitutional resistance in Parliament, down to the reign of Richard I. The revolt of the earls of Leicester and Norfolk against Henry II., which endangered his throne and comprehended his children with a large part of his barons, appears not to have been founded even upon the pretext of public grievances. Under Richard I. something more of a national spirit began to show itself. For the king having left his chancellor, William Longchamp, joint regent and justiciary with the Bishop of Durham during his crusade, the foolish insolence of the former, who excluded his coadjutor from any share in the administration, provoked every one of the nobility. A convention of these, the king's brother placing himself at their head, passed a sentence of removal and banishment upon the chancellor. Though there might be reason to conceive that this would not be unpleasing to the king, who was already apprised how much Longchamp had abused his trust, it was a remarkable assumption of power by that assembly, and the earliest authority for a leading principle of our constitution, the responsibility of ministers to Parliament.

[18] The distinction between the two nations was pretty well obliterated at the end of Henry II.'s reign, as we learn from the Dialogue on the Exchequer, then written: Jam cohabitantibus Anglicis et Normannis, et alterutrûm uxores ducentibus vel nubentibus, sic permixtæ sunt nationes, ut vix discerni possit hodie, de liberis loquor, quis Anglicus, quis Normannus sit genere; exceptis duntaxat ascriptitiis qui villani dicuntur, quibus non est liberum obstantibus dominis suis a sui status conditione discedere. Eapropter pene quicunque sic hodie occisus reperitur, ut murdrum punitur, exceptis his quibus certa sunt ut diximus servilis conditionis indicia (p. 26). See NOTE II., "On the Duration of Distinction between Norman and Saxon."

§ 10. In the succeeding reign of John all the rapacious exactions usual to these Norman kings were not only redoubled, but mingled with other outrages of tyranny still more intolerable. These, too, were to be endured at the hands of a prince utterly contemptible for his folly and cowardice. One is surprised at the forbearance displayed by the barons, till they took up arms at length in that confederacy which ended in establishing the Great Charter of Liberties. As this was the first effort towards a legal government, so is it beyond comparison the most important event in our history, except that Revolution without which its benefits would have been rapidly annihilated. The constitution of England has indeed no single date from which its duration is to be reckoned. The institutions of positive law, the far more important changes which time has wrought in the order of society, during six hundred years subsequent to the Great Charter, have undoubtedly lessened its direct application to our present circumstances. But it is still the key-stone of English liberty. All that has since been obtained is little more than as confirmation or commentary; and if every subsequent law were to be swept away, there would still remain the bold features that distinguish a free from a despotic monarchy. It has been lately the fashion to depreciate the value of Magna Charta, as if it had sprung from the private ambition of a few selfish barons, and redressed only some feudal abuses. It is indeed of little importance by what motives those who obtained it were guided. The real characters of men most distinguished in the transactions of that time are not easily determined at present. Yet if we bring these ungrateful suspicions to the test, they prove destitute of all reasonable foundation. An equal distribution of civil rights to all classes of freemen forms the peculiar beauty of the charter. In this just solicitude for the people, and in the moderation which infringed upon no essential prerogative of the monarchy, we may perceive a liberality and patriotism very unlike the selfishness which is sometimes rashly imputed to those ancient barons. And, as far as we are guided by historical testimony, two great men, the pillars of our Church and State, may be considered as entitled beyond the rest to the glory of this monument—Stephen Langton, archbishop of Canterbury, and William, earl of Pembroke. To their temperate zeal for a legal government, England was indebted during that critical period for the two greatest blessings that patriotic statesmen could confer—the establishment of civil liberty upon an immovable basis, and the preservation

of national independence under the ancient line of sovereigns, which rasher men were about to exchange for the dominion of France.

By the Magna Charta of John reliefs were limited to a certain sum according to the rank of the tenant, the waste committed by guardians in chivalry restrained, the disparagement in matrimony of female wards forbidden, and widows secured from compulsory marriage. These regulations, extending to the sub-vassals of the crown, redressed the worst grievances of every military tenant in England. The franchises of the city of London and of all towns and boroughs were declared inviolable. The freedom of commerce was guaranteed to alien merchants. The Court of Common Pleas, instead of following the king's person, was fixed at Westminster. The tyranny exercised in the neighborhood of royal forests met with some check, which was further enforced by the Charter of Forests under Henry III.

But the essential clauses of Magna Charta are those which protect the personal liberty and property of all freemen, by giving security from arbitrary imprisonment and arbitrary spoliation. "No freeman (says the 29th chapter of Henry III.'s charter, which, as the existing law, I quote in preference to that of John, the variations not being very material) shall be taken or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor send upon him, but by lawful judgment of his peers, or by the law of the land.[16] We will sell to no man, we will not deny or delay to any man, justice or right." It is obvious that these words, interpreted by any honest court of law, convey an ample security for the two main rights of civil society. From the era, therefore, of King John's charter, it must have been a clear principle of our constitution that

[16] Nisi per legale judicium parium suorum, *vel* per legem terræ. Several explanations have been offered of the alternative clause, which some have referred to judgment by default or demurrer—others to the process of attachment for contempt. Certainly there are many legal procedures besides trial by jury, through which a party's goods or person may be taken. But one may doubt whether these were in contemplation of the framers of Magna Charta. In an entry of the charter of 1217 by a contemporary hand, preserved in a book in the town-clerk's office in London, called Liber Custumarum et Regum antiquorum, a various reading, *et* per legem terræ, occurs. —Blackstone's Charters, p. 42. And the word *vel* is so frequently used for *et*, that I am not wholly free from a suspicion that it was so intended in this place. The meaning will be that no person shall be disseized, etc., except upon a lawful cause of action or indictment found by the verdict of a jury. This really seems as good as any of the disjunctive interpretations, but I do not offer it with much confidence.

But perhaps the best sense of the disjunctive will be perceived by remembering that judicium parium was generally opposed to the combat or the ordeal, which were equally *lex terræ*. The Magna Charta is printed at length on p. 552 seq.

no man can be detained in prison without trial. Whether courts of justice framed the writ of Habeas Corpus in conformity to the spirit of this clause, or found it already in their register, it became from that era the right of every subject to demand it. That writ, rendered more actively remedial by the statute of Charles II., but founded upon the broad basis of Magna Charta, is the principal bulwark of English liberty; and if ever temporary circumstances, or the doubtful plea of political necessity, shall lead men to look on its denial with apathy, the most distinguishing characteristic of our constitution will be effaced.

As the clause recited above protects the subject from any absolute spoliation of his freehold rights, so others restrain the excessive amercements which had an almost equally ruinous operation. The magnitude of his offense, by the 14th clause of Henry III.'s charter, must be the measure of his fine; and in every case the *contenement* (a word expressive of chattels necessary to each man's station, as the arms of a gentleman, the merchandise of a trader, the plough and wagons of a peasant) was exempted from seizure. A provision was made in the charter of John that no aid or escuage should be imposed, except in the three feudal cases of aid, without consent of Parliament. And this was extended to aids paid by the city of London. But the clause was omitted in the three charters granted by Henry III., though Parliament seem to have acted upon it in most part of his reign. It had, however, no reference to tallages imposed upon towns without their consent. Fourscore years were yet to elapse before the great principle of parliamentary taxation was explicitly and absolutely recognized.

§ 11. From this era a new soul was infused into the people of England. Her liberties, at the best long in abeyance, became a tangible possession, and those indefinite aspirations for the laws of Edward the Confessor were changed into a steady regard for the Great Charter. Pass but from the history of Roger de Hoveden to that of Matthew Paris, from the second Henry to the third, and judge whether the victorious struggle had not excited an energy of public spirit to which the nation was before a stranger. The strong man, in the sublime language of Milton, was aroused from sleep, and shook his invincible locks. Tyranny, indeed, and injustice will, by all historians not absolutely servile, be noted with moral reprobation; but never shall we find in the English writers of the twelfth century that assertion of positive and national rights which distinguishes those of the next age,

and particularly the monk of St. Alban's. From his prolix history we may collect three material propositions as to the state of the English constitution during the long reign of Henry III.; a prince to whom the epithet of worthless seems best applicable; and who, without committing any flagrant crimes, was at once insincere, ill-judging, and pusillanimous. The intervention of such a reign was a very fortunate circumstance for public liberty, which might possibly have been crushed in its infancy if an Edward had immediately succeeded to the throne of John.

1. The Great Charter was always considered as a fundamental law. But yet it was supposed to acquire additional security by frequent confirmation. This it received, with some not inconsiderable variation, in the first, second, and ninth years of Henry's reign. The last of these is in our present statute-book, and has never received any alterations; but Sir E. Coke reckons thirty-two instances wherein it has been solemnly ratified. Several of these were during the reign of Henry III., and were invariably purchased by the grant of a subsidy. This prudent accommodation of Parliament to the circumstances of their age not only made the law itself appear more inviolable, but established that correspondence between supply and redress which for some centuries was the balance-spring of our constitution. The charter, indeed, was often grossly violated by their administration. Even Hubert de Burgh, of whom history speaks more favorably than of Henry's later favorites, though a faithful servant of the crown, seems, as is too often the case with such men, to have thought the king's honor and interest concerned in maintaining an unlimited prerogative. The government was, however, much worse administered after his fall. From the great difficulty of compelling the king to observe the boundaries of law, the English clergy, to whom we are much indebted for their zeal in behalf of liberty during this reign, devised means of binding his conscience and terrifying his imagination by religious sanctions. The solemn excommunication, accompanied with the most awful threats, pronounced against the violators of Magna Charta, is well known from our common histories. The king was a party to this ceremony, and swore to observe the charter. But Henry III., though a very devout person, had his own notions as to the validity of an oath that affected his power, and indeed passed his life in a series of perjuries. According to the creed of that age, a papal dispensation might annul any prior engagement; and he was generally on suf-

ficiently good terms with Rome to obtain such an indulgence.

2. Though the prohibition of levying aids or escuages without consent of Parliament had been omitted in all Henry's charters, yet neither one nor the other seems, in fact, to have been exacted at discretion throughout his reign. On the contrary, the barons frequently refused the aids, or rather subsidies, which his prodigality was always demanding. Indeed it would probably have been impossible for the king, however frugal, stripped as he was of so many lucrative though oppressive prerogatives by the Great Charter, to support the expenditure of government from his own resources. Tallages on his demesnes, and especially on the rich and ill-affected city of London, he imposed without scruple; but it does not appear that he ever pretended to a right of general taxation. We may, therefore, take it for granted that the clause in John's charter, though not expressly renewed, was still considered as of binding force. The king was often put to great inconvenience by the refusal of supply; and at one time was reduced to sell his plate and jewels, which the citizens of London buying, he was provoked to exclaim with envious spite against their riches, which he had not been able to exhaust.

3. The power of granting money must of course imply the power of withholding it; yet this has sometimes been little more than a nominal privilege. But in this reign the English Parliament exercised their right of refusal, or, what was much better, of conditional assent. Great discontent was expressed at the demand of a subsidy in 1237; and the king alleging that he had expended a great deal of money on his sister's marriage with the emperor, and also upon his own, the barons answered that he had not taken their advice in those affairs, nor ought they to share the punishment of acts of imprudence they had not committed. In 1241, a subsidy having been demanded for the war in Poitou, the barons drew up a remonstrance, enumerating all the grants they had made on former occasions, but always on condition that the imposition should not be turned into precedent. Their last subsidy, it appears, had been paid into the hands of four barons, who were to expend it at their discretion for the benefit of the king and kingdom—an early instance of parliamentary control over public expenditure. Finally, the barons positively refused any money, and he extorted 1500 marks from the city of London. Some years afterwards they declared their readiness to burden themselves more than ever

if they could secure the observance of the charter; and requested that the justiciary, chancellor, and treasurer might be appointed with consent of Parliament, according, as they asserted, to ancient custom, and might hold their offices during good behavior.

Forty years of mutual dissatisfaction had elapsed, when a signal act of Henry's improvidence brought on a crisis which endangered his throne. Innocent IV., out of mere animosity against the family of Frederick II., left no means untried to raise up a competitor for the crown of Naples, which Manfred had occupied. Richard, earl of Cornwall, having been prudent enough to decline this speculation, the pope offered to support Henry's second son, Prince Edmund. Tempted by such a prospect, the silly king involved himself in irretrievable embarrassments by prosecuting an enterprise which could not possibly be advantageous to England, and upon which he entered without the advice of his Parliament. Destitute himself of money, he was compelled to throw the expense of this new crusade upon the pope; but the assistance of Rome was never gratuitous, and Henry actually pledged his kingdom for the money which she might expend in a war for her advantage and his own. He did not even want the effrontery to tell Parliament in 1257, introducing his son Edmund as king of Sicily, that they were bound for the repayment of 14,000 marks with interest. The pope had also, in furtherance of the Neapolitan project, conferred upon Henry the tithes of all benefices in England, as well as the first-fruits of such as should be vacant. Such a concession drew upon the king the implacable resentment of his clergy, already complaining of the cowardice or connivance that had during all his reign exposed them to the shameless exactions of Rome. Henry had now, indeed, cause to regret his precipitancy. Alexander IV., the reigning pontiff, threatened him not only with a revocation of the grant to his son, but with an excommunication and general interdict, if the money advanced on his account should not be immediately repaid, and a Roman agent explained the demand to a Parliament assembled in London. The sum required was so enormous, we are told, that it struck all the hearers with astonishment and horror. The nobility of the realm were indignant to think that one man's supine folly should thus bring them to ruin. Who can deny that measures beyond the ordinary course of the constitution were necessary to control so prodigal and injudicious a sovereign? Accordingly, the barons insisted that twenty-four persons should be nominated, half by the

king and half by themselves, to reform the state of the kingdom. These were appointed on the meeting of the Parliament at Oxford, after a prorogation.

The seven years that followed are a revolutionary period, the events of which we do not find satisfactorily explained by the historians of the time. A king divested of prerogatives by his people soon appears even to themselves an injured party. And, as the baronial oligarchy acted with that arbitrary temper which is never pardoned in a government that has an air of usurpation about it, the Royalists began to gain ground, chiefly through the defection of some who had joined in the original limitations imposed on the crown, usually called the provisions of Oxford. An ambitious man, confident in his talents and popularity, ventured to display too marked a superiority above his fellows in the same cause. But neither his character nor the battles of Lewes and Evesham, fall strictly within the limits of a constitutional history. It is, however, important to observe that, even in the moment of success, Henry III. did not presume to revoke any part of the Great Charter. His victory had been achieved by the arms of the English nobility, who had, generally speaking, concurred in the former measures against his government, and whose opposition to the Earl of Leicester's usurpation was compatible with a steady attachment to constitutional liberty.

§ 12. The opinions of eminent lawyers are, undoubtedly, where legislative or judicial authorities fail, the best evidence that can be adduced in constitutional history. It will, therefore, be satisfactory to select a few passages from Bracton, himself a judge at the end of Henry III.'s reign, by which the limitations of prerogative by law will clearly appear to have been fully established. "The king," says he, "must not be subject to any man, but to God and the law; for the law makes him king. Let the king, therefore, give to the law what the law gives to him—dominion and power; for there is no king where will, and not law, bears rule." "The king (in another place) can do nothing on earth, being the minister of God, but what he can do by law; nor is what is said (in the Pandects) any objection, that whatever the prince pleases shall be law; because by the words that follow in that text it appears to design not any mere will of the prince, but that which is established by the advice of his councillors, the king giving his authority, and deliberation being had upon it." This passage is, undoubtedly, a misrepresentation of the famous Lex Regia, which has ever been interpreted

to convey the unlimited power of the people to their emperors. But the very circumstance of so perverted a gloss put upon this text is a proof that no other doctrine could be admitted in the law of England. In another passage Bracton reckons as superior to the king, "not only God and the law, by which he is made king, but his court of earls and barons; for the former (comites) are so styled as associates of the king, and whoever has an associate has a master; so that, if the king were without a bridle, that is, the law, they ought to put a bridle upon him." Several other passages in Bracton might be produced to the same import; but these are sufficient to demonstrate the important fact that, however extensive or even indefinite might be the royal prerogative in the days of Henry III., the law was already its superior, itself but made part of the law, and was incompetent to overthrow it. It is true that in this very reign the practice of dispensing with statutes by a non-obstante was introduced, in imitation of the papal dispensations. But this prerogative could only be exerted within certain limits, and, however pernicious it may be justly thought, was, when thus understood and defined, not, strictly speaking, incompatible with the legislative sovereignty of Parliament.

§ 13. In conformity with the system of France and other feudal countries, there was one standing council, which assisted the kings of England in the collection and management of their revenue, the administration of justice to suitors, and the dispatch of all public business. This was styled *Curia Regis* (the King's Court), and held in his palace, or wherever he was personally present. It was composed of the great officers; the chief justiciary,[17] the chancellor, the constable, marshal, chamberlain, steward, and treasurer, with any others whom the king might appoint. Of this great court there was, as it seems, from the beginning, a particular branch, in which all matters relating to the revenue were exclusively transacted. This, though composed of the same

[17] The chief justiciary (*capitalis justiciarius*) was the greatest subject in England. Besides presiding in the King's Court and in the Exchequer, he was originally, by virtue of his office, the regent of the kingdom during the absence of the sovereign, which, till the loss of Normandy, occurred very frequently. The first time when the dignity of this office was impaired was at the death of John, when the justiciary, Hubert de Burgh, being besieged in Dover Castle, those who proclaimed Henry III. at Gloucester constituted the Earl of Pembroke governor of the king and kingdom, Hubert still retaining his office. In 1241 the Archbishop of York was appointed to the regency during Henry's absence in Poitou, without the title of justiciary. Still the office was so considerable that the barons who met in the Oxford Parliament of 1258 insisted that the justiciary should be annually chosen with their approbation. But the subsequent successes of Henry prevented this being established, and Edward I. discontinued the office altogether.

persons, yet, being held in a different part of the palace, and for different business, was distinguished from the King's Court by the name of the Exchequer—a separation which became complete when civil pleas were decided and judgments recorded in this second court. In the Exchequer the justices were called *barones*, or *barones scaccarii*.

Henry II., in 1176, reduced the justices in the Curia Regis from eighteen to five, and ordered that they should hear and determine all writs of the kingdom. From this time, and probably from none earlier, we may date the commencement of the Court of King's Bench, which very soon acquired, at first indifferently with the council, and then exclusively, the appellation of Curia Regis.[18]

It is probable that in the age next after the Conquest few causes in which the Crown had no interest were carried before the royal tribunals, every man finding a readier course of justice in the manor or county to which he belonged. But by degrees this supreme jurisdiction became more familiar; and, as it seemed less liable to partiality or intimidation than the provincial courts, suitors grew willing to submit to its expensiveness and inconvenience. It was obviously the interest of the King's Court to give such equity and steadiness to its decisions as might encourage this disposition. But because few, comparatively speaking, could have recourse to so distant a tribunal as that of the King's Court, and perhaps also on account of the attachment which the English felt to their ancient right of trial by the neighboring freeholders, Henry II. established itinerant justices to decide civil and criminal pleas within each county.[19] To this excellent institution we have owed the uniformity of our common law, which would have otherwise been split, like that of France, into a multitude of local customs; and we still owe to it the assurance, which is felt by the poorest and most remote inhabitant of England, that his right is weighed by the same incorrupt and acute understanding upon which the decision of the highest questions is reposed.

[18] For much information about the Curia Regis, and especially this branch of it, the student of our constitutional history should have recourse to Madox's History of the Exchequer, and to the Dialogus de Scaccario, written in the time of Henry II. by "Richard, bishop of London, Treasurer of the Exchequer, son of Nigel, bishop of Ely, his predecessor in the office."—[Stubbs.] The reader must still keep in mind the threefold meaning of Curia Regis: the common council of the realm; the select council for judicial as well as administrative purposes; and the Court of King's Bench, separated from the last in the reign of Henry II., and soon afterwards acquiring, exclusively, the denomination Curia Regis.

[19] Justices in eyre, or, as we now call them, of assize, do not appear to have gone their circuits regularly before 22 Henry II. (1170).

The justices of assize seem originally to have gone their circuits annually; and as part of their duty was to set tallages upon royal towns, and superintend the collection of the revenue, we may be certain that there could be no long interval. This annual visitation was expressly confirmed by the twelfth section of Magna Charta, which provides also that no assize of novel disseizin, or mort d'ancestor, should be taken except in the shire where the lands in controversy lay. Hence this clause stood opposed, on the one hand, to the encroachments of the King's Court, which might otherwise, by drawing pleas of land to itself, have defeated the suitor's right to a jury from the vicinage; and, on the other, to those of the feudal aristocracy, who hated any interference of the crown to chastise their violations of law, or control their own jurisdiction. Accordingly, while the confederacy of barons against Henry III. was in its full power, an attempt was made to prevent the regular circuits of the judges.

Long after the separation of the Exchequer from the King's Court, another branch was detached for the decision of private suits. This had its beginning, in Madox's opinion, as early as the reign of Richard I. But it was completely established by Magna Charta. "Common Pleas," it is said in the fourteenth clause, "shall not follow our court, but be held in some certain place." Thus was formed the Court of Common Bench at Westminster,[20] with full and, strictly speaking, exclusive jurisdiction over all civil disputes, where neither the king's interest, nor any matter savoring of a criminal nature, was concerned. For of such disputes neither the Court of King's Bench nor that of Exchequer can take cognizance, except by means of a legal fiction, which, in the one case, supposes an act of force, and in the other a debt to the crown.

§ 14. The principal officers of state, who had originally been effective members of the King's Court, began to withdraw from it, after this separation into three courts of justice, and left their places to regular lawyers, though the treasurer and chancellor of the Exchequer have still seats on the equity side of that court, a vestige of its ancient constitution. It would, indeed, have been difficult for men bred in camps or palaces to fulfill the ordinary functions of judicature under such a system of law as had grown up in En-

[20] After the erection of the Common Bench the style of the Superior Court began to alter. It ceased by degrees to be called the King's Court. Pleas were said to be held coram rege, or coram rege ubicunque fuerit. And thus the Court of King's Bench was formed out of the remains of the ancient Curia Regis (see above, p. 480).

gland. The rules of legal decision among a rude people are always very simple; not serving much to guide, far less to control, the feelings of natural equity. Such were those which prevailed among the Anglo-Saxons; requiring no subtler intellect or deeper learning than the earl or sheriff at the head of his County Court might be expected to possess. But a great change was wrought in about a century after the Conquest. Our English lawyers, prone to magnify the antiquity like the other merits of their system, are apt to carry up the date of the common law, till, like the pedigree of an illustrious family, it loses itself in the obscurity of ancient time. Even Sir Matthew Hale does not hesitate to say that its origin is as undiscoverable as that of the Nile. But though some features of the common law may be distinguishable in Saxon times, while our limited knowledge prevents us from assigning many of its peculiarities to any determinable period, yet the general character and most essential parts of the system were of much later growth. The laws of the Anglo-Saxon kings are as different from those collected by Glanvil as the laws of two different nations. The pecuniary compositions for crimes, especially for homicide, which run through the Anglo-Saxon code down to the laws ascribed to Henry I., are not mentioned by Glanvil. Death seems to have been the regular punishment of murder, as well as robbery. Though the investigation by means of ordeal was not disused in his time, yet trial by combat, of which we find no instance before the Conquest, was evidently preferred. Under the Saxon government, suits appear to have commenced, even before the king, by verbal or written complaint; at least, no trace remains of the original writ, the foundation of our civil procedure. The descent of lands before the Conquest was according to the custom of gavelkind, or equal partition among the children; in the age of Henry I., the eldest son took the principal fief to his own share; in that of Glanvil, he inherited all the lands held by knight-service; but the descent of socage lands depended on the particular custom of the estate. By the Saxon laws, upon the death of the son without issue, the father inherited; by our common law, he is absolutely, and in every case, excluded. Lands were, in general, devisable by testament before the Conquest, but not in the time of Henry II., except by particular custom. These are sufficient samples of the differences between our Saxon and Norman jurisprudence; but the distinct character of the two will strike more forcibly every one who peruses successively the laws published

by Wilkins, and the treatise ascribed to Glanvil. The former resemble the barbaric codes of the Continent, and the capitularies of Charlemagne and his family, minute to an excess in apportioning punishments, but sparing and indefinite in treating of civil rights; while the other, copious, discriminating, and technical, displays the characteristics, as well as unfolds the principles, of English law. It is difficult to assert any thing decisively as to the period between the Conquest and the reign of Henry II. which presents fewer materials for legal history than the preceding age; but the treatise denominated the Laws of Henry I., compiled at the soonest about the end of Stephen's reign, bears so much of a Saxon character, that I should be inclined to ascribe our present common law to a date, so far as it is capable of any date, not much antecedent to the publication of Glanvil. At the same time, since no kind of evidence attests any sudden and radical change in the jurisprudence of England, the question must be considered as left in great obscurity. Perhaps it might be reasonable to conjecture that the treatise called Leges Henrici Primi contains the ancient usages still prevailing in the inferior jurisdictions, and that of Glanvil the rules established by the Norman lawyers of the King's Court, which would of course acquire a general recognition and efficacy, in consequence of the institution of justices holding their assizes periodically throughout the country.

The capacity of deciding legal controversies was now only to be found in men who had devoted themselves to that peculiar study; and a race of such men arose, whose eagerness, and even enthusiasm, in the profession of the law were stimulated by the self-complacency of intellectual dexterity in threading its intricate and thorny mazes. The Normans are noted in their own country for a shrewd and litigious temper, which may have given a character to our courts of justice in early times. Something, too, of that excessive subtlety, and that preference of technical to rational principles which runs through our system, may be imputed to the scholastic philosophy which was in vogue during the same period, and is marked by the same features. But we have just reason to boast of the leading causes of these defects — an adherence to fixed rules, and a jealousy of judicial discretion, which have in no country, I believe, been carried to such a length. Hence, precedents of adjudged cases, becoming authorities for the future, have been constantly noted, and form, indeed, almost the sole ground of argument in questions of mere law. But, these authorities being frequently unrea-

sonable and inconsistent—partly from the infirmity of all human reason, partly from the imperfect manner in which a number of unwarranted and incorrect reporters have handed them down—later judges grew anxious to elude by impalpable distinctions what they did not venture to overturn. In some instances this evasive skill has been applied to acts of the legislature. Those who are moderately conversant with the history of our law will easily trace other circumstances that have co-operated in producing that technical and subtle system which regulates the course of real property—for, as that formed almost the whole of our ancient jurisprudence, it is there that we must seek its original character. But much of the same spirit pervades every part of the law. No tribunals of a civilized people ever borrowed so little, even of illustration, from the writings of philosophers, or from the institutions of other countries. Hence law has been studied, in general, rather as an art than a science—with more solicitude to know its rules and distinctions than to perceive their application to that for which all rules of law ought to have been established—the maintenance of public and private rights.

§ 15. Whatever may be thought of the effect which the study of the law had upon the rights of the subject, it conduced materially to the security of good order by ascertaining the hereditary succession of the crown. Five kings out of seven that followed William the Conqueror were usurpers, according, at least, to modern notions. Of these, Stephen alone encountered any serious opposition upon that ground; and, with respect to him, it must be remembered that all the barons, himself included, had solemnly sworn to maintain the succession of Matilda. Henry II. procured a parliamentary settlement of the crown upon his eldest and second sons—a strong presumption that their hereditary right was not absolutely secure. A mixed notion of right and choice, in fact, prevailed as to the succession of every European monarchy. The coronation oath,[21] and the form of popular consent then required, were considered as more material, at least to perfect a title, than we deem them at present. They gave seizin, as it were, of the crown, and, in cases of disputed pretensions, had a sort of judicial efficacy. The Chronicle of Dunstable says, concerning Richard I., that he was "elevated to the throne by hereditary right, after a solemn election by the clergy and people:" words that indicate the current principles of that

[21] The early kings always date their reign from their coronation, and not from the decease of their predecessors.

age. It is to be observed, however, that Richard took upon him the exercise of royal prerogatives without waiting for his coronation. The succession of John has certainly passed, in modern times, for an usurpation: I do not find that it was considered as such by his own contemporaries on this side of the Channel. The question of inheritance between an uncle and the son of his deceased elder brother was yet unsettled, as we learn from Glanvil, even in private succession. In the case of sovereignties, which were sometimes contended to require different rules from ordinary patrimonies, it was, and continued long to be, the most uncertain point in public law. John's pretensions to the crown might, therefore, be such as the English were justified in admitting, especially as his reversionary title seems to have been acknowledged in the reign of his brother Richard. In a charter of the first year of his reign John calls himself king "by hereditary right, and through the consent and favor of the Church and people."

It is deserving of remark that, during the rebellions against this prince and his son Henry III., not a syllable was breathed in favor of Eleanor, Arthur's sister, who, if the present rules of succession had been established, was the undoubted heiress of his right. The barons chose rather to call in the aid of Louis, with scarcely a shade of title, though with much better means of maintaining himself. One should think that men whose fathers had been in the field for Matilda could make no difficulty about female succession. But I doubt whether, notwithstanding that precedent, the crown of England was universally acknowledged to be capable of descending to a female heir. Great averseness had been shown by the nobility of Henry I. to his proposal of settling the kingdom on his daughter. And from a remarkable passage which I shall produce in a note, it appears that even in the reign of Edward III. the succession was supposed to be confined to the male line.[22]

At length, about the middle of the thirteenth century, the lawyers applied to the crown the same strict principles of

[22] This is intimated by the treaty made in 1339 for a marriage between the eldest son of Edward III. and the Duke of Brabant's daughter. Edward therein promises that, if his son should die before him, leaving male issue, he will procure the consent of his barons, nobles, and cities (that is, of Parliament; nobles here meaning knights, if the word has any distinct sense) for such issue to inherit the kingdom; and if he die leaving a daughter only, Edward or his heir shall make such provision for her as belongs to the daughter of a king.—Rymer, t. v., p. 114. It may be inferred from this instrument that, in Edward's intention, if not by the constitution, the Salic law was to regulate the succession of the English crown. This law, it must be remembered, he was compelled to admit in his claim on the kingdom of France, though with a certain modification which gave a pretext of title to himself.

descent which regulate a private inheritance. Edward I. was proclaimed immediately upon his father's death, though absent in Sicily. Something, however, of the old principle may be traced in this proclamation, issued in his name by the guardians of the realm, where he asserts the crown of England "to have devolved upon him by hereditary succession and the will of his nobles." These last words were omitted in the proclamation of Edward II.; since whose time the crown has been absolutely hereditary. The coronation oath, and the recognition of the people at that solemnity, are formalities which convey no right either to the sovereign or the people, though they may testify the duties of each.

§ 16. I can not conclude the present chapter without observing one most prominent and characteristic distinction between the constitution of England and that of every other country in Europe—I mean its refusal of civil privileges to the lower nobility, or those whom we denominate the gentry. In France, in Spain, in Germany, wherever, in short, we look, the appellations of nobleman and gentleman have been strictly synonymous. Those entitled to bear them by descent, by tenure of land, by office or royal creation, have formed a class distinguished by privileges inherent in their blood from ordinary freemen. Marriage with noble families, or the purchase of military fiefs, or the participation of many civil offices, were, more or less, interdicted to the commons of France and the empire. Of these restrictions nothing, or next to nothing, was ever known in England. The law has never taken notice of gentlemen. From the reign of Henry III. at least, the legal equality of all ranks below the peerage was, to every essential purpose, as complete as at present. Compare two writers nearly contemporary, Bracton with Beaumanoir, and mark how the customs of England are distinguishable in this respect. The Frenchman ranges the people under three divisions—the noble, the free, and the servile; our countryman has no generic class, but freedom and villenage. No restraint seems ever to have lain upon marriage; nor have the children even of a peer been ever deemed to lose any privilege by his union with a commoner. The purchase of lands held by knight-service was always open to all freemen. A few privileges, indeed, were confined to those who had received knighthood; but, upon the whole, there was a virtual equality of rights among all the commoners of England. What is most particular is, that the peerage itself imparts no privilege except to its actual possessor. In every other country the descendants of no-

bles can not but themselves be noble, because their nobility is the immediate consequence of their birth. But though we commonly say that the blood of a peer is ennobled, yet this expression seems hardly accurate, and fitter for heralds and lawyers; since, in truth, nothing confers nobility but the actual descent of a peerage. The sons of peers, as we well know, are commoners, and totally destitute of any legal right beyond a barren precedence.

There is no part, perhaps, of our constitution so admirable as this equality of civil rights—this *isonomia*, which the philosophers of ancient Greece only hoped to find in democratical government.[23] From the beginning our law has been no respecter of persons. It screens not the gentleman of ancient lineage from the judgment of an ordinary jury, nor from ignominious punishment. It confers not, it never did confer, those unjust immunities from public burdens which the superior orders arrogated to themselves upon the Continent. Thus, while the privileges of our peers, as hereditary legislators of a free people, are incomparably more valuable and dignified in their nature, they are far less invidious in their exercise than those of any other nobility in Europe. It is, I am firmly persuaded, to this peculiar democratical character of the English monarchy that we are indebted for its long permanence, its regular improvement, and its present vigor. It is a singular, a providential circumstance, that, in an age when the gradual march of civilization and commerce was so little foreseen, our ancestors, deviating from the usages of neighboring countries, should, as if deliberately, have guarded against that expansive force which, in bursting through obstacles improvidently opposed, has scattered havoc over Europe.

This tendency to civil equality in the English law may, I think, be ascribed to several concurrent causes. In the first place, the feudal institutions were far less military in England than upon the Continent. From the time of Henry II. the escuage or pecuniary commutation for personal service became almost universal. The armies of our kings were composed of hired troops, great part of whom certainly were knights and gentlemen, but who, serving for pay, and not by virtue of their birth or tenure, preserved nothing of the feudal character. It was not, however, so much for the ends of

[23] Πλῆθος ἄρχον, πρῶτον μὲν οὔνομα κάλλιστον ἔχει, ἰσονομίαν, says the advocate of democracy, in the discussion of forms of government which Herodotus (iii., 80) has put into the mouths of three Persian satraps, after the murder of Smerdis; a scene conceived in the spirit of Corneille.

national as of private warfare, that the relation of lord and vassal was contrived. The right which every baron in France possessed, of redressing his own wrongs and those of his tenants by arms, rendered their connection strictly military. But we read very little of private wars in England. Notwithstanding some passages in Glanvil, which certainly appear to admit their legality, it is not easy to reconcile this with the general tenor of our laws. They must always have been a breach of the king's peace, which our Saxon lawgivers were perpetually striving to preserve, and which the Conqueror and his sons more effectually maintained. Nor can we trace many instances of actual hostilities among the nobility of England after the Conquest, except during such an anarchy as the reign of Stephen, or the minority of Henry III. The most prominent instance, perhaps, of what may be deemed a private war arose out of a contention between the earls of Gloucester and Hereford, in the reign of Edward I., during which acts of extraordinary violence were perpetrated; but, far from its having passed for lawful, these powerful nobles were both committed to prison and paid heavy fines. Thus the tenure of knight-service was not, in effect, much more peculiarly connected with the profession of arms than that of socage. There was nothing in the former condition to generate that high self-estimation which military habits inspire. On the contrary, the burdensome incidents of tenure in chivalry rendered socage the more advantageous, though less honorable, of the two.

In the next place, we must ascribe a good deal of efficacy to the old Saxon principles that survived the conquest of William and infused themselves into our common law. A respectable class of free socagers, having, in general, full rights of alienating their lands, and holding them probably at a small certain rent from the lord of the manor, frequently occur in Doomsday-book. Though, as I have already observed, these were derived from the superior and more fortunate Anglo-Saxon ceorls, they were perfectly exempt from all marks of villenage both as to their persons and estates. Most have derived their name from the Saxon *soc*, which signifies a franchise, especially one of jurisdiction, and they undoubtedly were suitors to the court-baron of the lord, to whose *soc*, or right of justice, they belonged. They were consequently judges in civil causes, determined before the manerial tribunal. Such privileges set them greatly above the roturiers or censiers of France. They were all Englishmen, and their tenure strictly English; which seems to have given

it credit in the eyes of our lawyers, when the name of Englishman was affected even by those of Norman descent, and the laws of Edward the Confessor became the universal demand. Certainly Glanvil, and still more Bracton, treat the tenure in free socage with great respect. And we have reason to think that this class of freeholders was very numerous even before the reign of Edward I.

But, lastly, the change which took place in the constitution of Parliament consummated the degradation, if we must use the word, of the lower nobility: I mean, not so much their attendance by representation instead of personal summons, as their election by the whole body of freeholders, and their separation, along with citizens and burgesses, from the House of Peers. These changes will fall under consideration in the following chapter.

NOTES TO CHAPTER VIII.—PART II.

I. THE LEGISLATION OF THE GREAT COUNCIL.

On this Council, the COMMUNE CONCILIUM REGNI, see the remarks in the Report of Lords' Committee on the Dignity of a Peer (1819, 2d edition, 1829), with the criticisms upon it by Mr. Allen in the "Edinburgh Review" (vol. XXXV.).

The custom of the Anglo-Saxon kings had been to hold meetings of their witan very frequently, at least in the regular course of their government. And this was also the rule in the grand fiefs of France. The pomp of their court, the maintenance of loyal respect, the power of keeping a vigilant eye over the behavior of the chief men, were sufficient motives for the Norman kings to preserve this custom; and the nobility of course saw in it the security of their privileges as well as the exhibition of their importance. Hence we find that William and his sons held their courts *de more*, as a regular usage, three times a year, and generally at the great festivals, and in different parts of the kingdom. Here the public business was transacted. Aids were not regularly granted, and laws much more rarely enacted in them, yet they were still a national council.

It is to be remarked that, with the exception of the charters granted by William, Henry, and Stephen, which are in general rather like confirmations of existing privileges than novel enactments, though some clauses appear to be of the latter kind, little authentic evidence can be found of any legislative proceedings from the Conquest to the reign of Henry II. But the Constitutions of Clarendon, in 1164, are certainly a regular statute; whoever might be the consenting parties, these famous provisions were enacted in the great council of the nation. This is equally true of the Assizes of Northampton, in 1178. But the earliest Anglo-Norman law which is extant in a regular form is the assize made at Clarendon for the preservation of the peace, issued by the king early in 1166. (This important document is given at length on p. 550.) In other instances the royal prerogative may perhaps have been held sufficient for innovations which, after the constitution became settled, would have required the sanction of the whole legislature. No act of Parliament is known to have been made under Richard I.; but an ordinance, setting the assize of bread, in the fifth of John, is recited to be established "communi concilio baronum nostrorum." Whether these words afford sufficient ground for believing that the assize was set in a full council of the realm, may possibly be doubtful.

II. DURATION OF DISTINCTION BETWEEN NORMAN AND SAXON.

The passage in a contemporary writer, quoted on p. 421, being so unequivocal as it is, ought to have much weight in the question as to the duration of the distinc-

tion between the Norman and English races. It is the favorite theory of M. Thierry, pushed to an extreme length both as to his own country and ours, that the conquering nation, Franks in one case, Normans in the other, remained down to a late period—a period indeed to which he assigns no conclusion—unmingled, or at least undistinguishable, constituting a double people of sovereigns and subjects, becoming a noble order in the state, haughty, oppressive, powerful, or, what is, in one word, most odious to a French ear in the nineteenth century, aristocratic.

It may be worthy of consideration, whether the Norman blood were really blended with the native quite so soon as the reign of Henry II.; that is, whether intermarriages in the superior classes of society had become so frequent as to efface the distinction. M. Thierry produces a few passages which seem to intimate its continuance. But these are too loosely worded to warrant much regard; and he admits that after the reign of Henry I. we have no proof of any hostile spirit on the part of the English towards the new dynasty; and that some efforts were made to conciliate them by representing Henry II. as the descendant of the Saxon line. (Vol. ii., p. 374.) This, in fact, was true; and it was still more important that the name of English was studiously assumed by our kings (ignorant though they might be, in M. Thierry's phrase, what was the vernacular word for that dignity), and that the Anglo-Normans are seldom, if ever, mentioned by that separate designation. England was their dwelling-place, English their name, the English law their inheritance; if this was not wholly the case before the separation of the mother country under John, and yet we do not perceive much limitation necessary, it can admit of no question afterwards.

It is, nevertheless, manifest that the descendants of William's tenants in capite, and of others who seized on so large a portion of our fair country from the Channel to the Tweed, formed the chief part of that aristocracy which secured the liberties of the Anglo-Saxon race, as well as their own, at Runnymede; and which, sometimes as peers of the realm, sometimes as well-born commoners, placed successive barriers against the exorbitances of power, and prepared the way for that expanded scheme of government which we call the English constitution. The names in Dugdale's Baronage and in his Summonitiones ad Parliamentum speak for themselves; in all the earlier periods, and perhaps almost through the Plantagenet dynasty, we find a great preponderance of such as indicate a French source. New families sprang up by degrees, and are now sometimes among our chief nobility; but in general, if we find any at this day who have tolerable pretensions to deduce their lineage from the Conquest, they are of Norman descent; the very few Saxon families that may remain with an authentic pedigree in the male line are seldom found in the wealthier class of gentry. And on this account I must confess that M. Thierry's opinion of a long-continued distinction of races has more semblance of truth as to this kingdom than can be pretended as to France, without a blind sacrifice of undeniable facts at the altar of plebeian malignity.

III. STATUTES OF WILLIAM THE CONQUEROR.

Professor Stubbs remarks ("Select Charters," etc., p. 80): "The following short record, which is found in this, its earliest form, in the 'Textus Roffensis,' a manuscript written during the reign of Henry I., contains what is probably the sum and substance of all the legal enactments actually made by the Conqueror, independent of his confirmations of the earlier laws; they are probably the alterations or emendations referred to by Henry I. in his charter, as made by his father in the laws of King Edward:"

Hic intimatur quid Willelmus Rex Anglorum cum principibus suis constituit post Conquisitionem Angliæ.

1. In primis quod super omnia unum vellet Deum per totum regnum suum venerari, unam fidem Christi semper inviolatam custodiri, pacem et securitatem inter Anglos et Normannos servari.

2. Statuimus etiam ut omnis liber homo fœdere et sacramento affirmet, quod infra et extra Angliam Willelmo regi fideles esse volunt, terras et honorem illius omni fidelitate cum eo servare, et ante eum contra inimicos defendere.

3. Volo autem ut omnes homines quos mecum adduxi aut post me venerunt sint in pace mea et quiete. Et si quis de illis occisus fuerit, dominus ejus habeat infra quinque dies homicidam ejus si potuerit; sin autem, incipiat persolvere mihi xlvi. marcas argenti quamdiu substantia illius domini perduraverit. Ubi vero substantia defecerit, totus hundredus in quo occisio facta est communiter persolvat quod remanet.

4. Et omnis Francigena qui tempore regis Edwardi propinqui mei fuit in Anglia particeps consuetudinum Anglorum, quod

ipsi dicunt onhiote et anscote, persolvatur secundum legem Anglorum. Hoc decretum sancitum est in civitate Claudia.

5. Interdicimus etiam ut nulla viva pecunia vendatur aut ematur nisi infra civitates, et hoc ante tres fideles testes: nec aliquam rem vetustam sine fidejussore et waranto. Quod si aliter fecerit, solvat et persolvat, et postea forisfacturam.

6. Decretum est etiam ibi, ut, si Francigena appellaverit Anglum de perjurio aut murdro, furto, homicidio, ran, quod Angli dicunt apertam rapinam quae negari non potest, Anglus se defendat per quod melius voluerit, aut judicio ferri aut duello. Si autem Anglus infirmus fuerit, inveniat alium qui pro eo faciat. Si quis eorum victus fuerit, emendet xl. solidos regi. Si Anglus Francigenam appellaverit et probare noluerit judicio aut duello, volo tamen Francigenam purgare se sacramento non fracto.

7. Hoc quoque praecipio et volo, ut omnes habeant et teneant legem Edwardi regis in terris et in omnibus rebus, adauctis iis quae constitui ad utilitatem populi Anglorum.

8. Omnis homo qui voluerit se tenere pro libero sit in pleglo, ut plegius teneat et habeat illum ad justitiam si quid offenderit. Et si quisquam talium evaserit, videant plegii ut simpliciter solvant quod calumniatum est, et purgent se quia in evaso nullam fraudem noverint. Requiratur hundredus et comitatus, sicut antecessores nostri statuerunt. Et qui juste venire deberent et venire noluerint, semel summoneantur; et si secundo venire noluerint, accipiatur unus bos, et summoneantur tertio. Et si non tertio venerint, accipiatur alius bos: quarta autem vice si non venerint, reddatur de rebus hominis illius qui venire noluerit quod calumniatum est, quod dicitur ceapgeld; et insuper forisfactura regis.

9. Ego prohibeo ut nullus vendat hominem extra patriam super plenam forisfacturam meam.

10. Interdico etiam ne quis occidatur aut suspendatur pro aliqua culpa, sed eruantur oculi, et testiculi abscidantur. Et hoc praeceptum non sit violatum super forisfacturam meam plenam. — ("MS. Bodl. Rawlinson," C. 641.)

PART III.

THE ENGLISH CONSTITUTION.

§ 1. Reign of Edward I. § 2. Confirmatio Chartarum. § 3. Constitution of Parliament. § 4. The Spiritual Peers. § 5. The Temporal Peers. Tenure by Barony. Difficulty of the Subject. § 6. Origin of Representation of the Commons. Knights of Shires. Their Existence doubtfully traced through the Reign of Henry III. § 7. State of English Towns at the Conquest and afterwards. § 8. Their Progress. § 9. Representatives from them summoned to Parliament by Earl of Leicester. Improbability of an earlier Origin. § 10. Parliaments under Edward I. § 11. Separation of Knights and Burgesses from the Peers. § 12. Edward II. § 13. Gradual Progress of the Authority of Parliament traced through the Reigns of Edward III. § 14. Of Richard II. § 15. Of Henry IV. § 16. Authority of the House of Commons under the House of Lancaster. (1.) Right of Taxation. (2.) Appropriation of Supplies. (3.) Redress of Grievances. (4.) Legislative Rights. (5.) Controlling the Royal Expenditure. (6.) Impeachment of Ministers. (7.) Privilege of Parliament. § 17. Election of Knights and Burgesses. § 18. House of Lords. Baronies of Tenure. By Writ. Nature of the latter discussed. § 19. Creation of Peers by Act of Parliament. § 20. And by Patent. § 21. Summons of Clergy to Parliament. § 22. King's Ordinary Council. Its judicial and other Power. § 23. Character of the Plantagenet Government. Prerogative. Its Excesses. § 24. Erroneous Views corrected. Testimony of Sir John Fortescue to the Freedom of the Constitution. § 25. Causes of the superior Liberty of England considered. § 26. State of Society in England. § 27. Habits of Rapine. § 28. Villenage. Its gradual Extinction. § 29. Popular Outbreaks. § 30. Manumission of Villeins. § 31. Latter Years of Henry VI. § 32. Regencies. Instances of them enumerated. § 33. Pretensions of the House of York, and War of the Roses. § 34. Edward IV. § 35. Conclusion.

§ 1. THOUGH the undisputed accession of a prince like Edward I. to the throne of his father does not seem so cer-

venient a resting-place in history as one of those revolutions which interrupt the natural chain of events, yet the changes wrought during his reign make it properly an epoch in the progress of these inquiries. And, indeed, as ours is emphatically styled a government by king, lords, and commons, we can not, perhaps, in strictness, carry it farther back than the admission of the latter into Parliament; so that if the constant representation of the Commons is to be referred to the age of Edward I., it will be nearer the truth to date the English constitution from that than from any earlier era.

§ 2. The various statutes affecting the law of property and administration of justice, which have caused Edward I. to be named, rather hyperbolically, the English Justinian, bear no immediate relation to our present inquiries. In a constitutional point of view, the principal object is that statute entitled the Confirmation of the Charters, which was very reluctantly conceded by the king, in the twenty-fifth year of his reign. I do not know that England has ever produced any patriots to whose memory she owes more gratitude than Humphrey Bohun, earl of Hereford and Essex, and Roger Bigod, earl of Norfolk. In the Great Charter the base spirit and deserted condition of John take off something from the glory of the triumph, though they enhance the moderation of those who pressed no farther upon an abject tyrant. But to withstand the measures of Edward, a prince unequalled by any who had reigned in England since the Conqueror for prudence, valor, and success, required a far more intrepid patriotism. Their provocations, if less outrageous than those received from John, were such as evidently manifested a disposition in Edward to reign without any control—a constant refusal to confirm the charters, which in that age were hardly deemed to bind the king without his actual consent; heavy impositions, especially one on the export of wool, and other unwarrantable demands. He had acted with such unmeasured violence towards the clergy, on account of their refusal of further subsidies, that, although the ill-judged policy of that class kept their interests too distinct from those of the people, it was natural for all to be alarmed at the precedent of despotism.[1] These encroachments made resistance justifiable, and the circumstances of Edward made it prudent. His ambition, luckily for the people, had involved him in for-

[1] The fullest account we possess of these domestic transactions from 1294 to 1298 is in Walter Hemingford, one of the historians edited by Hearne, pp. 52-168. They have been vilely perverted by Carte, but extremely well told by Hume, the first writer who had the merit of exposing the character of Edward I.

eign warfare, from which he could not recede without disappointment and dishonor. Thus was wrested from him that famous statute, inadequately denominated the Confirmation of the Charters, because it added another pillar to our constitution, not less important than the Great Charter itself.

It was enacted by the 25 Edward I. that the Charter of Liberties, and that of the Forest, besides being explicitly confirmed, should be sent to all sheriffs, justices in eyre, and other magistrates throughout the realm, in order to their publication before the people; that copies of them should be kept in cathedral churches, and publicly read twice in the year, accompanied by a solemn sentence of excommunication against all who should infringe them; that any judgment given contrary to these charters should be invalid, and holden for nought. This authentic promulgation, those awful sanctions of the Great Charter, would alone render the statute of which we are speaking illustrious. But it went a great deal farther. Hitherto the king's prerogative of levying money, by name of tallage, or prize, from his towns and tenants in demesne, had passed unquestioned. Some impositions, that especially on the export of wool, affected all his subjects. It was now the moment to enfranchise the people, and give that security to private property which Magna Charta had given to personal liberty. By the 5th and 6th sections of this statute, "the aids, tasks, and prizes" before taken are renounced as precedents; and the king "grants for him and his heirs, as well as to archbishops, bishops, abbots, priors, and other folk of Holy Church, as also to earls, barons, and to all commonalty of the land, that for no business from henceforth we shall take such manner of aids, tasks, nor prizes, but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prizes due and accustomed." The toll upon wool, so far as levied by the king's mere prerogative, is expressly released by the 7th section.[a]

§ 3. We come now to a part of our subject exceedingly important, but more intricate and controverted than any other, the *Constitution of Parliament.* I have taken no notice of this in the last section, in order to present uninterruptedly

[a] The Confirmatio Chartarum is properly denominated a statute, and always printed as such; but in form, like Magna Charta, it is a charter, or letters patent, proceeding from the crown, without even reciting the consent of the realm. And its "teste" is at Ghent, 2 Nov., 1297—Edward having engaged, conjointly with the Count of Flanders, in a war with Philip the Fair. But a Parliament had been held at London, when the barons insisted on these concessions. The circumstances are not wholly unlike those of Magna Charta. The Confirmatio Chartarum is printed on p. 537.

to the reader the gradual progress of our legislature down to its complete establishment under the Edwards.

§ 4. *The Spiritual Peers.*—One constituent branch of the great councils held by William the Conqueror and all his successors was composed of the bishops and the heads of religious houses holding their temporalities immediately of the crown. It has been frequently maintained that these spiritual lords sat in Parliament only by virtue of their baronial tenure. And certainly they did all hold baronies, which, according to the analogy of lay peerages, were sufficient to give them such a share in the legislature. Nevertheless, I think that this is rather too contracted a view of the rights of the English hierarchy, and, indeed, by implication, of the peerage; for a great council of advice and assent in matters of legislation, or national importance, was essential to all the Northern governments. And all of them, except, perhaps, the Lombards, invited the superior ecclesiastics to their councils; not upon any feudal notions, which at that time had hardly begun to prevail, but chiefly as representatives of the Church and of religion itself; next, as more learned and enlightened councillors than the lay nobility; and in some degree, no doubt, as rich proprietors of land. It will be remembered, also, that ecclesiastical and temporal affairs were originally decided in the same assemblies, both upon the Continent and in England. The Norman Conquest, which destroyed the Anglo-Saxon nobility, and substituted a new race in their stead, could not affect the immortality of Church possessions. The bishops of William's age were entitled to sit in his councils by the general custom of Europe, and by the common law of England, which the Conquest did not overturn.

§ 5. *The Temporal Peers.*—Next to these spiritual lords are the earls and barons, or lay peerage of England. The former dignity was, perhaps, not so merely official as in the Saxon times, although the earl was entitled to the third penny of all emoluments arising from the administration of justice in the County Courts, and might, perhaps, command the militia of his county, when it was called forth. Every earl was also a baron, and held an honor or barony of the crown, for which he paid a higher relief than an ordinary baron, probably on account of the profits of his earldom.

It is universally agreed that the only baronies known for two centuries after the Conquest were incident to the tenure of land held immediately from the crown. There are, however, material difficulties in the way of rightly understanding their nature which require careful examination. All tenants

in-chief of the crown, by knight-service, were summoned to the king's council, and were peers of his court. To all of these the term *Baron* was originally applied, a word of very wide significance.[3] But in course of time a distinction arose between the *Greater Barons* and *Lesser Barons*, the former holding their lands by barony (*per baroniam*), and the latter simply by knight-service; and gradually the name of baron was confined to the former class. It is difficult to determine the characteristic differences of the two, or the way in which the distinction arose; but it would seem that the *Greater Barons* held, under one title, a number of knight's fees—that is, of estates, from each of which the feudal service of a knight was due. There is, however, complete proof of the separation between the two classes of barons before the reign of John, and the term baron came to be applied exclusively to the greater barons. Tenants-in-chief are enumerated distinctly from earls and barons in the charter of Henry I. (See p. 548.) Knights, as well as barons, are named as present in the Parliament of Northampton in 1165, in that held at the same town in 1176, and upon other occasions.

We learn from the Great Charter that the greater barons were summoned to the king's council by particular writs; the other tenants-in-chief by one general summons through the sheriffs of their several counties, whenever an aid or scutage was required.[4] The consent of all the tenants-in-chief was required for taxation; and there appears sufficient evidence that they were occasionally present for other important purposes. It is, however, very probable that writs of summons were actually addressed only to those of distinguished name, to those resident near the place of meeting, or to the servants and favorites of the crown. This seems to be deducible from the words in the Great Charter, which limit the king's engagement to summon all tenants-in-chief, through the sheriff, to the case of his requiring an aid or scutage, and still more from the withdrawing of this promise in the first year of Henry III. The privilege of attending on such occasions, though legally general, may never have been generally exercised.

The result of the whole inquiry into the constitution of

[3] The word *baro* originally meant only a man, and is not unfrequently applied to common freeholders, as in the phrase of court-baron. It was used too for the magistrates or chief men of cities, as it is still for the judges of the Exchequer, and the representatives of the Cinque Ports.

[4] "Faciemus summoneri archiepiscopos, episcopos, abbates, comites et majores barones regni sigillatim per literas nostras. Et præterea faciemus summoneri in generali per vicecomites et ballivos nostros omnes alios qui in capite tenent de nobis."

Parliament, down to the reign of John, seems to be—1. That the Norman kings explicitly renounced all prerogative of levying money on the immediate military tenants of the crown, without their consent given in a great council of the realm; this immunity extending, also, to their sub-tenants and dependents. 2. That all these tenants-in-chief had a constitutional right to attend, and ought to be summoned; but whether they could attend without a summons is not manifest. 3. That the summons was usually directed to the higher barons, and to such of a second class as the king pleased, many being omitted for different reasons, though all had a right to it. 4. That on occasions when money was not to be demanded, but alterations made in the law, some of these second barons, or tenants-in-chief, were at least occasionally summoned, but whether by strict right or usage does not fully appear. 5. That the irregularity of passing many of them over when councils were held for the purpose of levying money, led to the provision in the Great Charter of John by which the king promises that they shall all be summoned through the sheriff on such occasions; but the promise does not extend to any other subject of parliamentary deliberation. 6. That even this concession, though but the recognition of a known right, appeared so dangerous to some in the government that it was withdrawn in the first charter of Henry III.

But this attendance in Parliament of inferior tenants-in-chief, some of them too poor to have received knighthood, grew insupportably vexatious to themselves, and was not well liked by the king. He knew them to be dependent upon the barons, and dreaded the confluence of a multitude who assumed the privilege of coming in arms to the appointed place. So inconvenient and mischievous a scheme could not long subsist among an advancing people, and fortunately the true remedy was discovered with little difficulty.

§ 6. The principle of representation, in its widest sense, can hardly be unknown to any government not purely democratical. The system of ecclesiastical councils, considered as organs of the Church, rested upon the principle of a virtual or an express representation, and had a tendency to render its application to national assemblies more familiar.

We find nothing that can arrest our attention, in searching out the origin of county representation, till we come to a writ in the fifteenth year of John, directed to all the sheriffs in the following terms: "Rex Vicecomiti N., salutem. Præcipimus tibi quod omnes milites ballivæ tuæ qui sum-

moniti fuerunt esse apud Oxoniam ad Nos a die Omnium Sanctorum in quindecim dies venire facias cum armis suis: corpora vero baronum sine armis singulariter, et *quatuor discretos milites* de comitatu tuo, illuc venire facias, ad eundem terminum, ad loquendum nobiscum de negotiis regni nostri." Still it remains problematical whether these four knights (the only clause which concerns our purpose) were to be elected by the county or returned in the nature of a jury, at the discretion of the sheriff. Since there is no sufficient proof whereon to decide, we can only say with hesitation that there *may* have been an instance of county representation in the fifteenth year of John.

We may next advert to a practice, of which there is very clear proof in the reign of Henry III. Subsidies granted in Parliament were assessed, not as in former times by the justices upon their circuits, but by knights freely chosen in the County Court. This appears by two writs, one of the fourth and one of the ninth year of Henry III. At a subsequent period, by a provision of the Oxford Parliament in 1258, every county elected four knights to inquire into grievances, and deliver their inquisition into Parliament.

The next writ now extant, that wears the appearance of parliamentary representation, is in the thirty-eighth of Henry III. This, after reciting that the earls, barons, and other great men (cæteri magnates) were to meet at London, three weeks after Easter, with horses and arms, for the purpose of sailing into Gascony, requires the sheriff to compel all within his jurisdiction, who hold twenty pounds a year of the king in chief, or of those in ward of the king, to appear at the same time and place. And that, besides those mentioned, he shall cause to come before the king's council at Westminster, on the fifteenth day after Easter, two good and discreet knights of his county, whom the men of the county shall have chosen for this purpose, in the stead of all and each of them, to consider, along with the knights of other counties, what aid they will grant the king in such an emergency. In the principle of election, and in the object of the assembly, which was to grant money, this certainly resembles a summons to Parliament. There are, indeed, anomalies sufficiently remarkable upon the face of the writ which distinguish this meeting from a regular Parliament. But when the scheme of obtaining money from the commons of shires through the consent of their representatives had once been entertained, it was easily applicable to more formal councils of the nation.

A few years later there appears another writ analogous to

a summons. During the contest between Henry III. and the confederate barons in 1261, they presumed to call a sort of Parliament, summoning three knights out of every county, "secum tractaturos super communibus negotiis regni." This we learn only by an opposite writ issued by the king, directing the sheriff to enjoin these knights who had been convened by the earls of Leicester and Gloucester to their meeting at St. Alban's, that they should repair instead to the king at Windsor, and to no other place, "nobiscum super præmissis colloquium habituros." It is not absolutely certain that these knights were elected by their respective counties. But even if they were so, this assembly has much less the appearance of a Parliament than that in the thirty-eighth of Henry III.

At length, in the year 1265, the forty-ninth of Henry III., while he was a captive in the hands of Simon de Montfort, writs were issued in his name to all the sheriffs, directing them to return two knights for the body of their county, with two citizens or burgesses for every city and borough contained within it. This, therefore, is the epoch at which the representation of the commons becomes indisputably manifest; even should we reject altogether the more equivocal instances of it which have just been enumerated.

Whether the knights were still elected by only the king's military tenants, to spare them the inconvenience of personal attendance, or by the freeholders in general, is a difficult question. The legal antiquaries are divided. Prynne does not seem to have doubted but that the knights were "elected in the full county, by and for the whole county," without respect to the tenure of the freeholders. But Brady and Carte are of a different opinion. Yet their disposition to narrow the basis of the constitution is so strong, that it creates a sort of prejudice against their authority. And if I might offer an opinion on so obscure a subject, I should be much inclined to believe that, even from the reign of Henry III., the election of knights by all freeholders in the County Court, without regard to tenure, was little, if at all, different from what it is at present.[a]

§ 7. The progress of towns in several Continental countries, from a condition bordering upon servitude to wealth and liberty, has more than once attracted our attention in other parts of the present work. Their growth in England, both from general causes and imitative policy, was very similar

[a] This question has been discussed with much ability in the "Edinburgh Review," vol. xxvi., p. 341.

and nearly coincident. Some of the greater towns, and London in particular, enjoyed the right of electing magistrates with a certain jurisdiction before the Conquest.[6] But at the time of the Conquest we find the burgesses or inhabitants of towns living under the superiority or protection of the king, or of some other lord, to whom they paid annual rents, and determinate dues or customs. Besides these regular payments, which were in general not heavy, they were liable to tallages at the discretion of their lords.

One of the earliest and most important changes in the condition of the burgesses was the conversion of their individual tributes into a perpetual rent from the whole borough. The town was then said to be affirmed, or let in fee-farm, to the burgesses and their successors forever. Previously to such a grant the lord held the town in his demesne, and was the legal proprietor of the soil and tenements; though I by no means apprehend that the burgesses were destitute of a certain estate in their possessions. But of a town in fee-farm he only kept the superiority and the inheritance of the annual rent, which he might recover by distress. The burgesses held their lands by burgage-tenure, nearly analogous to, or rather a species of, free socage. Perhaps before the grant they might correspond to modern copyholders. It is of some importance to observe that the lord, by such a grant of the town in fee-farm, whatever we may think of its previous condition, divested himself of his property, or lucrative dominion over the soil, in return for the perpetual rent; so that tallages subsequently set at his own discretion upon the inhabitants, however common, can hardly be considered as a just exercise of the rights of proprietorship.

Under such a system of arbitrary taxation, however, it was evident to the most selfish tyrant that the wealth of his burgesses was his wealth, and their prosperity his interest; much more were liberal and sagacious monarchs, like Henry II., inclined to encourage them by privileges. From the time of William Rufus there was no reign in which charters were not granted to different towns of exemption from tolls on rivers and at markets—those lighter manacles of feudal tyranny; or of commercial franchises; or of immunity from the ordinary jurisdictions; or, lastly, of internal self-regulation. Thus the original charter of Henry I. to the city of London concedes to the citizens, in addition to valuable commercial and fiscal immunities, the right of choosing their

[6] On the Municipal Rights of London, see Note I.

own sheriff and justice, to the exclusion of every foreign jurisdiction. These grants, however, were not in general so extensive till the reign of John. Before that time the interior arrangement of towns had received a new organization. In the Saxon period we find voluntary associations, sometimes religious, sometimes secular; in some cases for mutual defense against injury, in others for mutual relief in poverty. These were called guilds, from the Saxon verb *gildan*, to pay or contribute, and exhibited the natural, if not the legal, character of corporations. At the time of the Conquest, such voluntary incorporations of the burgesses possessed in some towns either landed property of their own, or rights of superiority over that of others. An internal elective government seems to have been required for the administration of a common revenue, and of other business incident to their association. They became more numerous and more peculiarly commercial after that era, as well from the increase of trade as through imitation of similar fraternities existing in many towns of France. The spirit of monopoly gave strength to those institutions, each class of traders forming itself into a body, in order to exclude competition. Thus were established the companies in corporate towns, that of the Weavers in London being perhaps the earliest; and these were successively consolidated and sanctioned by charters from the crown. In towns not large enough to admit of distinct companies, one merchant guild comprehended the traders in general, or the chief of them; and this, from the reign of Henry II. downward, became the subject of incorporating charters. The management of their internal concerns, previously to any incorporation, fell naturally enough into a sort of oligarchy, which the tenor of the charter generally preserved. Though the immunities might be very extensive, the powers were more or less restrained to a small number. Except in a few places, the right of choosing magistrates was first given by King John; and certainly must rather be ascribed to his poverty than to any enlarged policy, of which he was utterly incapable.

§ 8. From the middle of the twelfth century to that of the thirteenth, the traders of England became more and more prosperous. The towns on the southern coast exported tin and other metals in exchange for the wines of France; those on the eastern sent corn to Norway; the Cinque Ports bartered wool against the stuffs of Flanders. Though bearing no comparison with the cities of Italy or the Empire, they

increased sufficiently to acquire importance at home. That vigorous prerogative of the Norman monarchs which kept down the feudal aristocracy compensated for whatever inferiority there might be in the population and defensible strength of the English towns, compared with those on the Continent. They had to fear no petty oppressors—no local hostility; and, if they could satisfy the rapacity of the crown, were secure from all other grievances. London, far above the rest—our ancient and noble capital—might, even in those early times, be justly termed a member of the political system. This great city, so admirably situated, was rich and populous long before the Conquest. Bede, at the beginning of the eighth century, speaks of London as a great market, which traders frequented by land and sea. It paid £15,000 out of £82,000 raised by Canute upon the kingdom. If we believe Roger Hoveden, the citizens of London, on the death of Ethelred II., joined with part of the nobility in raising Edmund Ironside to the throne; Harold I., according to better authority—the Saxon Chronicle and William of Malmsbury—was elected by their concurrence. Descending to later history, we find them active in the civil war of Stephen and Matilda. The famous Bishop of Winchester tells the Londoners that they are almost accounted as noblemen on account of the greatness of their city—into the community of which it appears that some barons had been received. Indeed, the citizens themselves, or at least the principal of them, were called barons. It was certainly by far the greatest city in England. There have been different estimates of its population, some of which are extravagant; but I think it could hardly have contained less than thirty or forty thousand souls within its walls, and the suburbs were very populous. These numbers, the enjoyment of privileges, and the consciousness of strength, infused a free and even a mutinous spirit into their conduct. The Londoners were always on the barons' side in their contests with the crown. They bore a part in deposing William Longchamp, the chancellor and justiciary of Richard I. They were distinguished in the great struggle for Magna Charta—the privileges of their city are expressly confirmed in it, and the Mayor of London was one of the twenty-five barons to whom the maintenance of its provisions was delegated. In the subsequent reign the citizens of London were regarded with much dislike and jealousy by the court, and sometimes suffered pretty severely at its hands, especially after the battle of Evesham.

Notwithstanding the influence of London in these seasons

of disturbance, we do not perceive that it was distinguished from the most insignificant town by greater participation in national councils. Rich, powerful, honorable, and high-spirited as its citizens had become, it was very long before they found a regular place in Parliament. The prerogative of imposing tallages at pleasure, unsparingly exercised by Henry III., even over London, left the crown no inducement to summon the inhabitants of cities and boroughs. As these, indeed, were daily growing more considerable, they were certain, in a monarchy so limited as that of England became in the thirteenth century, of attaining, sooner or later, this eminent privilege. Although, therefore, the object of Simon de Montfort in calling them to his Parliament, after the battle of Lewes, was merely to strengthen his own faction, which prevailed among the commonalty, yet their permanent admission into the Legislature may be ascribed to a more general cause; for otherwise it is not easy to see why the innovation of an usurper should have been drawn into precedent, though it might, perhaps, accelerate what the course of affairs was gradually preparing.

§ 9. It is well known that the earliest writs of summons to cities and boroughs, of which we can prove the existence, are those of Simon de Montfort, earl of Leicester, bearing date 12th of December, 1264, in the forty-ninth year of Henry III. (See page 558.) After a long controversy, almost all judicious inquirers seem to have acquiesced in admitting this origin of popular representation. The argument may be very concisely stated: we find, from innumerable records, that the king imposed tallages upon his demesne towns at discretion. No public instrument, previous to the forty-ninth of Henry III., names the citizens and burgesses as constituent parts of Parliament, though prelates, barons, knights, and sometimes freeholders, are enumerated; while, since the undoubted admission of the Commons, they are almost invariably mentioned. No historian speaks of representatives appearing for the people, or uses the word citizen or burgess in describing those present in Parliament. Such convincing, though negative, evidence is not to be invalidated by some general and ambiguous phrases, whether in writs and records or in historians. Those monkish annalists are poor authorities upon any point where their language is to be delicately measured. But it is hardly possible that, writing circumstantially, as Roger de Hoveden and Matthew Paris sometimes did, concerning proceedings in Parliament, they could have failed to mention the Commons in unequivocal expres-

sions, if any representatives from that order had actually formed a part of the assembly.

§ 10. There is no great difficulty in answering the question why the deputies of boroughs were finally and permanently ingrafted upon Parliament by Edward I. The Government was becoming constantly more attentive to the wealth that commerce brought into the kingdom, and the towns were becoming more flourishing and more independent. But chiefly there was a much stronger spirit of general liberty, and a greater discontent at violent acts of prerogative from the era of Magna Charta; after which authentic recognition of free principles, many acts which had seemed before but the regular exercise of authority were looked upon as infringements of the subject's right. Among these, the custom of setting tallages at discretion would naturally appear the most intolerable; and men were unwilling to remember that the burgesses who paid them were indebted for the rest of their possessions to the bounty of the crown. In Edward I.'s reign, even before the great act of Confirmation of the Charters had rendered arbitrary impositions absolutely unconstitutional, they might, perhaps, excite louder murmurs than a discreet administration would risk. Though the necessities of the king, therefore, and his imperious temper often led him to this course, it was a more prudent counsel to try the willingness of his people before he forced their reluctance. And the success of his innovation rendered it worth repetition. Whether it were from the complacency of the Commons at being thus admitted among the peers of the realm, or from a persuasion that the king would take their money if they refused it, or from inability to withstand the plausible reasons of his ministers, or from the private influence to which the leaders of every popular assembly have been accessible, much more was granted in subsidies after the representation of the towns commenced than had ever been extorted in tallages.

To grant money was, therefore, the main object of their meeting; and if the exigencies of the administration could have been relieved without subsidies, the citizens and burgesses might still have sat at home and obeyed the laws which a council of prelates and barons enacted for their government. But it is a difficult question whether the king and the peers designed to make room for them, as it were, in legislation; and whether the power of the purse drew after it immediately, or only by degrees, those indispensable rights of consenting to laws which they now possess. There are no

sufficient means of solving this doubt during the reign of Edward I.;[1] but it must be highly questionable whether the Commons, who had so recently taken their place in Parliament, gave any thing more than a constructive assent to the laws enacted during this reign. They are not even named in the preamble of any statute till the last year of Edward I. Upon more than one occasion the sheriffs were directed to return the same members who had sat in the last Parliament, unless prevented by death or infirmity.

§ 11. It has been a very prevailing opinion that Parliament was not divided into two houses at the first admission of the Commons. If by this is only meant that the Commons did not occupy a separate chamber till some time in the reign of Edward III., the proposition, true or false, will be of little importance. They may have sat at the bottom of Westminster Hall, while the Lords occupied the upper end. But that they were ever intermingled in voting appears inconsistent with likelihood and authority. The usual object of calling a Parliament was to impose taxes; and these, for many years after the introduction of the Commons, were laid in different proportions upon the three estates of the realm. Thus, in 23 Edward I., the earls, barons, and knights gave the king an eleventh, the clergy a tenth; while he obtained a seventh from the citizens and burgesses: in the twenty-fourth of the same king the two former of these orders gave a twelfth, the last an eighth: in the thirty-third year a thirtieth was the grant of the barons and knights and of the clergy, a twentieth of the cities and towns. In the first of Edward II. the counties paid a twentieth, the towns a fifteenth. In the sixth of Edward III. the rates were a fifteenth and a tenth. These distinct grants imply distinct grantors; for it is not to be imagined that the Commons intermeddled in those affecting the Lords, or the Lords in those of the Commons. In fact, however, there is abundant proof of their separate existence

[1] The writ in 22 Edward I. directs two knights to be chosen "cum plenâ potestate pro se et totâ communitate comitatûs prædicti ad consulendum et consentiendum pro se et communitate illâ, his quæ comites, barones, et proceres prædicti concorditer ordinaverint in præmissis." That of the next year runs, "ad faciendum tunc quod de communi consilio ordinabitur in præmissis." The same words are inserted in the writ of 26 Edward I. In that of 28 Edward I. the knights are directed to be sent "cum plenâ potestate audiendi et faciendi quæ ibidem ordinari contigerint pro communi commodo." Several others of the same reign have the words "ad faciendum." The difficulty is to pronounce whether this term is to be interpreted in the sense of *performing* or of *enacting;* whether the representatives of the Commons were merely to learn from the Lords what was to be done, or to bear their part in advising upon it. The earliest writ, that of 22 Edward I., certainly implies the latter; and I do not know that any of the rest are conclusive to the contrary. In the reign of Edward II. the words "ad consentiendum" alone, or "ad faciendum et consentiendum," begin; and from that of Edward III. this form has been constantly used.

long before the seventeenth of Edward III., which is the epoch assigned by Carte, or even the sixth of that king, which has been chosen by some other writers. Thus the Commons sat at Acton Burnell in the eleventh of Edward I., while the upper house was at Shrewsbury. In the eighth of Edward II. "the Commons of England complain to the king and his council," etc. These must surely have been the Commons assembled in Parliament, for who else could thus have entitled themselves? In the nineteenth of the same king we find several petitions, evidently proceeding from the body of the Commons in Parliament, and complaining of public grievances.

As the knights of shires correspond to the lower nobility of other feudal countries, we have less cause to be surprised that they belonged originally to the same branch of Parliament as the barons, than at their subsequent intermixture with men so inferior in station as the citizens and burgesses. It is by no means easy to define the point of time when this distribution was settled; but I think it may be inferred from the rolls of Parliament that the houses were divided as they are at present in the eighth, ninth, and nineteenth years of Edward II. This appears, however, beyond doubt in the first of Edward III. Yet in the sixth of the same prince, though the knights and burgesses are expressly mentioned to have consulted together, the former taxed themselves in a smaller rate of subsidy than the latter.

§ 12. The proper business of the House of Commons was to petition for redress of grievances, as much as to provide for the necessities of the crown. In the prudent fiction of English law no wrong is supposed to proceed from the source of right. The throne is fixed upon a pinnacle which perpetual beams of truth and justice irradiate, though corruption and partiality may occupy the middle region and cast their chill shade upon all below. In his high court of Parliament a king of England was to learn where injustice had been unpunished and where right had been delayed. The common courts of law, if they were sufficiently honest, were not sufficiently strong, to redress the subject's injuries where the officers of the crown or the nobles interfered. To Parliament he looked as the great remedial court for relief of private as well as public grievances. For this cause it was ordained in the fifth of Edward II. that the king should hold a Parliament once, or, if necessary, twice every year; "that the pleas which have been thus delayed, and those where the justices have differed, may be brought to a close."

And a short act of 4 Edward III., which was not very strictly regarded, provides that a Parliament shall be held "every year, or oftener, if need be." By what persons, and under what limitations, this jurisdiction in Parliament was exercised will come under our future consideration.

The efficacy of a king's personal character in so imperfect a state of government was never more strongly exemplified that in the two first Edwards. The father, a little before his death, had humbled his boldest opponents among the nobility; and as for the Commons, so far from claiming a right of remonstrating, we have seen cause to doubt whether they were accounted effectual members of the legislature for any purposes but taxation. But in the very second year of the son's reign they granted the twenty-fifth penny of their goods, "upon this condition, that the king should take advice and grant redress upon certain articles wherein they are aggrieved." These were answered at the ensuing Parliament, and are entered with the king's respective promises of redress upon the roll. It will be worth while to extract part of this record, that we may see what were the complaints of the Commons of England, and their notions of right, in 1309.

"The good people of the kingdom who are come hither to Parliament pray our lord the king that he will, if it please him, have regard to his poor subjects, who are much aggrieved by reason that they are not governed as they should be, especially as to the articles of the Great Charter; and for this, if it please him, they pray remedy. Besides which, they pray their lord the king to hear what has long aggrieved his people, and still does so from day to day, on the part of those who call themselves his officers, and to amend it, if he pleases." The articles, eleven in number, are to the following purport: 1. That the king's purveyors seize great quantities of victuals without payment; 2. That new customs are set on wine, cloth, and other imposts; 3. That the current coin is not so good as formerly; 4, 5. That the steward and marshal enlarge their jurisdiction beyond measure, to the oppression of the people; 6. That the commons find none to receive petitions addressed to the council; 7. That the collectors of the king's dues (pernours des prises) in towns and at fairs take more than is lawful; 8. That men are delayed in their civil suits by writs of protection; 9. That felons escape punishment by procuring charters of pardon; 10. That the constables of the king's castles take cognizance of common pleas; 11. That the king's escheators

oust men of lands held by good title, under pretense of an inquest of office.

These articles display in a short compass the nature of those grievances which existed under almost all the princes of the Plantagenet dynasty, and are spread over the rolls of Parliament for more than a century after this time. Edward gave the amplest assurances of putting an end to them all, except in one instance, the augmented customs on imports, to which he answered, rather evasively, that he would take them off till he should perceive whether himself and his people derived advantage from so doing, and act thereupon as he should be advised. Accordingly, the next year, he issued writs to collect these new customs again. But the Lords Ordainers superseded the writs, having entirely abrogated all illegal impositions. It does not appear, however, that, regard had to the times, there was any thing very tyrannical in Edward's government. He set tallages sometimes, like his father, on his demesne towns, without assent of Parliament. In the nineteenth year of his reign the Commons show that, "Whereas we and our ancestors have given many tallages to the king's ancestors to obtain the charter of the forest, which charter we have had confirmed by the present king, paying him largely on our part; yet the king's officers of the forest seize on lands, and destroy ditches, and oppress the people, for which they pray remedy, for the sake of God and his father's soul." They complain at the same time of arbitrary imprisonment, against the law of the land. To both these petitions the king returned a promise of redress; and they complete the catalogue of customary grievances in this period of our constitution.

During the reign of Edward II. the rolls of Parliament are imperfect, and we have not much assistance from other sources. The assent of the Commons, which frequently is not specified in the statutes of this age, appears in a remarkable and revolutionary proceeding, the appointment of the Lords Ordainers in 1312. In this case it indicates that the aristocratic party then combined against the crown were desirous of conciliating popularity. An historian relates that some of the Commons were consulted upon the ordinances to be made for the reformation of government.

§ 13. During the long and prosperous reign of Edward III. the efforts of Parliament in behalf of their country were rewarded with success in establishing upon a firm footing three essential principles of our Government—the illegality of raising money without consent; the necessity that the

two houses should concur for any alterations in the law; and, lastly, the right of the Commons to inquire into public abuses, and to impeach public counsellors. By exhibiting proofs of each of these from Parliamentary records I shall be able to substantiate the progressive improvement of our free constitution, which was principally consolidated during the reigns of Edward III. and his two next successors.

I. *Illegality of raising Money without Consent.* — In the sixth year of Edward III. a Parliament was called to provide for the emergency of an Irish rebellion, wherein, "because the king could not send troops and money to Ireland without the aid of his people, the prelates, earls, barons, and other great men, and the knights of shires, and all the Commons, of their free will, for the said purpose, and also in order that the king might live of his own, and not vex his people by excessive prizes, nor in other manner, grant to him the fifteenth penny, to levy of the commons,[8] and the tenth from the cities, towns, and royal demesnes. And the king, at the request of the same, in ease of his people, grants that the commissions lately made to certain persons assigned to set tallages on cities, towns, and demesnes throughout England shall be immediately repealed; and that in time to come he will not set such tallage, except as it has been done in the time of his ancestors, and he may reasonably do."

These concluding words are of dangerous implication; and certainly it was not the intention of Edward, inferior to none of his predecessors in the love of power, to divest himself of that eminent prerogative which, however illegally since the Confirmatio Chartarum, had been exercised by them all. But the Parliament took no notice of this reservation, and continued with unshaken perseverance to insist on this incontestable and fundamental right, which he was prone enough to violate.

In the thirteenth year of this reign the Lords and Commons gave their answer to commissioners sent to open the Parliament, and to treat with them on the king's part, in separate sealed rolls. The Commons declared that they could grant no subsidy without consulting their constituents; and therefore begged that another Parliament might be summoned, and in the mean time they would endeavor, by using persuasion with the people of their respective counties, to procure the grant of a reasonable aid in the next Parliament. They demanded also that the imposition on wool and lead should

[8] "La commonalté" seems in this place to mean the tenants of land, or commons of the counties, in contradistinction to citizens and burgesses.

be taken as it used to be in former times, "inasmuch as it is enhanced without assent of the Commons, or of the Lords, as we understand; and if it be otherwise demanded, that any one of the Commons may refuse it without being troubled on that account."

Wool, however, the staple export of that age, was too easy and tempting a prey to be relinquished by a prince engaged in an impoverishing war. Seven years afterwards, in 20 Edward III., we find the Commons praying that the great subsidy of forty shillings upon the sack of wool be taken off; and the old custom paid as heretofore was assented to and granted. The Government spoke this time in a more authoritative tone. "As to this point," the answer runs, "the prelates and others, seeing in what need the king stood of an aid before his passage beyond sea, to recover his rights and defend his kingdom of England, consented, with the concurrence of the merchants, that he should have in aid of his said war, and in defense of his said kingdom, forty shillings of subsidy for each sack of wool that should be exported beyond sea for two years to come. And upon this grant divers merchants have made many advances to our lord the king in aid of his war; for which cause this subsidy can not be repealed without assent of the king and his lords."

It is probable that Edward's counsellors wished to establish a distinction, long afterwards revived by those of James I., between customs levied on merchandise at the ports and internal taxes. The statute entitled Confirmatio Chartarum had manifestly taken away the prerogative of imposing the latter, which, indeed, had never extended beyond the tenants of the royal demesne. But its language was not quite so explicit as to the former, although no reasonable doubt could be entertained that the intention of the legislature was to abrogate every species of imposition unauthorized by Parliament. The thirtieth section of Magna Charta had provided that foreign merchants should be free from all tributes except the ancient customs; and it was strange to suppose that natives were excluded from the benefit of that enactment. Yet, owing to the ambiguous and elliptical style so frequent in our older laws, this was open to dispute, and could, perhaps, only be explained by usage. Edward I., in despite of both these statutes, had set a duty of threepence in the pound upon goods imported by merchant-strangers. This imposition was noticed as a grievance in the third year of his successor, and repealed by the Lords Ordainers. It

was revived, however, by Edward III., and continued to be levied ever afterwards.

Edward was led by the necessities of his unjust and expensive war into another arbitrary encroachment, of which we find as many complaints as of his pecuniary extortions. The Commons pray, in the same Parliament of 20 Edward III., that commissions should not issue for the future out of chancery to charge the people with providing men-at-arms, hobelers (or light cavalry), archers, victuals, or in any other manner, without consent of Parliament. The king in reply alleges absolute necessity; and the roll of Parliament in the next two years, the 21st and 22d of Edward III., is full of the same complaints on one side, and the same allegations of necessity on the other. In the latter year the Commons grant a subsidy, on condition that no illegal levying of money should take place, with several other remedial provisions; "and that these conditions should be entered on the roll of Parliament, as a matter of record, by which they may have remedy, if any thing should be attempted to the contrary in time to come." From this year the complaints of extortion became rather less frequent; and soon afterwards a statute was passed, "that no man shall be constrained to find men-at-arms, hobelers, nor archers, other than those which hold by such services, if it be not by common assent and grant made in Parliament."

II. *The Concurrence of both Houses in Legislation necessary.*—The second constitutional principle established in the reign of Edward III. was that the king and two houses of Parliament, in conjunction, possessed exclusively the right of legislation. Laws were now declared to be made by the king at the request of the Commons, and by the assent of the Lords and prelates. Such at least was the general form, though for many subsequent ages there was no invariable regularity in this respect. The Commons, who till this reign were rarely mentioned, were now as rarely omitted in the enacting clause. In fact, it is evident from the rolls of Parliament that statutes were almost always founded upon their petition. These petitions, with the respective answers made to them in the king's name, were drawn up after the end of the session in the form of laws, and entered upon the statute-roll. But here it must be remarked that the petitions were often extremely qualified and altered by the answer, insomuch that many statutes of this and some later reigns by no means express the true sense of the Commons. Sometimes they contented themselves with showing their griev-

ance, and praying remedy from the king and his council. Of this one eminent instance is the great statute of treasons. In the petition whereon this act is founded it is merely prayed that, "whereas the king's justices in different counties adjudge persons indicted before them to be traitors for sundry matters not known by the Commons to be treason, it would please the king by his council, and by the great and wise men of the land, to declare what are treasons in this present Parliament." The answer to this petition contains the existing statute, as a declaration on the king's part. But there is no appearance that it received the direct assent of the lower house. In the next reigns we shall find more remarkable instances of assuming a consent which was never positively given.

The statute of treasons, however, was supposed to be declaratory of the ancient law: in permanent and material innovations a more direct concurrence of all the estates was probably required. A new statute, to be perpetually incorporated with the law of England, was regarded as no light matter. It was a very common answer to a petition of the Commons, in the early part of this reign, that it could not be granted without making a new law. After the Parliament of 14 Edward III. a certain number of prelates, barons, and counsellors, with twelve knights and six burgesses, were appointed to sit from day to day in order to turn such petitions and answers as were fit to be perpetual into a statute; but for such as were of a temporary nature the king issued his letters patent. This reluctance to innovate without necessity, and to swell the number of laws which all were bound to know and obey with an accumulation of transitory enactments, led apparently to the distinction between statutes and ordinances. The latter are indeed defined by some lawyers to be regulations proceeding from the king and Lords without concurrence of the Commons. But if this be applicable to some ordinances, it is certain that the word, even when opposed to statute, with which it is often synonymous, sometimes denotes an act of the whole legislature. In the 37th of Edward III., when divers sumptuary regulations against excess of apparel were made in full Parliament, "it was demanded of the Lords and Commons, inasmuch as the matter of their petitions was novel and unheard of before, whether they would have them granted by way of ordinance or of statute. They answered that it would be best to have them by way of ordinance and not of statute, in order that any thing which should need amendment might

be amended at the next Parliament." So much scruple did they entertain about tampering with the statute law of the land.

Ordinances which, if it were not for their partial or temporary operation, could not well be distinguished from laws[9] were often established in great councils. These assemblies, which frequently occurred in Edward's reign, were hardly distinguishable, except in name, from Parliaments; being constituted not only of those who were regularly summoned to the House of Lords, but of deputies from counties, cities, and boroughs. Several places that never returned burgesses to Parliament have sent deputies to some of these councils. The most remarkable of these was that held in the 27th of Edward III., consisting of one knight for each county, and of two citizens or burgesses from every city or borough wherein the ordinances of the staple were established. These were previously agreed upon by the king and Lords, and copies given, one to the knights, another to the burgesses. The roll tells us that they gave their opinion in writing to the council, after much deliberation, and that this was read and discussed by the great men. These ordinances fix the staple of wool in particular places within England, prohibit English merchants from exporting that article under pain of death, inflict sundry other penalties, create jurisdictions, and in short have the effect of a new and important law. After they were passed the deputies of the Commons granted a subsidy for three years, complained of grievances, and received answers, as if in a regular Parliament. But they were aware that these proceedings partook of some irregularity, and endeavored, as was their constant method, to keep up the legal forms of the constitution. In the last petition of this council the Commons pray, "because many articles touching the state of the king and common profit of his kingdom have been agreed by him, the prelates, Lords, and Commons of his land, at this council, that the said articles may be recited at the next Parliament, and entered upon the roll; for this cause, that ordinances and agreements made in council are not of record, as if they had been made in a general Parliament." This, accordingly, was done at the ensuing Parliament, when these ordinances were expressly confirmed, and directed to be "holden for a statute to endure always."

[9] "If there be any difference between an ordinance and a statute, as some have collected, it is but only this, that an ordinance is but temporary till confirmed and made perpetual, but a statute is perpetual at first, and so have some ordinances also been." —Whitelocke on Parliamentary Writ, vol. ii., p. 297.

It must be confessed that the distinction between ordinances and statutes is very obscure, and perhaps no precise and uniform principle can be laid down about it. But it sufficiently appears that whatever provisions altered the common law or any former statute and were entered upon the statute-roll, transmitted to the sheriffs, and promulgated to the people as general obligatory enactments, were holden to require the positive assent of both houses of Parliament, duly and formally summoned.

Before we leave this subject it will be proper to take notice of a remarkable stretch of prerogative which, if drawn into precedent, would have effectually subverted this principle of parliamentary consent in legislation. In the 15th of Edward III. petitions were presented of a bolder and more innovating cast than was acceptable to the court: that no peer should be put to answer for any trespass except before his peers; that commissioners should be assigned to examine the accounts of such as had received public moneys; that the judges and ministers should be sworn to observe the Great Charter and other laws; and that they should be appointed in Parliament. The last of these was probably the most obnoxious; but the king, unwilling to defer a supply which was granted merely upon condition that these petitions should prevail, suffered them to pass into a statute with an alteration which did not take off much from their efficacy — namely, that these officers should indeed be appointed by the king with the advice of his council, but should surrender their charges at the next Parliament, and be there responsible to any who should have cause of complaint against them. The chancellor, treasurer, and judges entered their protestation that they had not assented to the said statutes, nor could they observe them, in case they should prove contrary to the laws and customs of the kingdom, which they were sworn to maintain. This is the first instance of a protest on the roll of Parliament against the passing of an act. Nevertheless they were compelled to swear on the cross of Canterbury to its observance.

This excellent statute was attempted too early for complete success. Edward's ministers plainly saw that it left them at the mercy of future Parliaments, who would readily learn the wholesome and constitutional principle of sparing the sovereign while they punished his advisers. They had recourse, therefore, to a violent measure, but which was likely in those times to be endured. By a proclamation addressed to all the sheriffs the king revokes and annuls the

statute, as contrary to the laws and customs of England and to his own just rights and prerogatives, which he had sworn to preserve; declaring that he had never consented to its passing, but, having previously protested that he would revoke it, lest the Parliament should have been separated in wrath, had dissembled, as was his duty, and permitted the great seal to be affixed; and that it appeared to the earls, barons, and other learned persons of his kingdom with whom he had consulted, that, as the said statute had not proceeded from his own good-will, it was null, and could not have the name or force of law. This revocation of a statute, as the price of which a subsidy had been granted, was a gross infringement of law, and undoubtedly passed for such at that time; for the right was already clear, though the remedy was not always attainable. Two years afterwards Edward met his Parliament, when that obnoxious statute was formally repealed.

Notwithstanding the king's unwillingness to permit this control of Parliament over his administration, he suffered, or rather solicited, their interference in matters which have since been reckoned the exclusive province of the crown. This was an unfair trick of his policy. He was desirous, in order to prevent any murmuring about subsidies, to throw the war upon Parliament as their own act, though none could have been commenced more selfishly for his own benefit, or less for the advantage of the people of England. It is called "the war which our lord the king has undertaken against his adversary of France, by common assent of all the Lords and Commons of his realm in divers parliaments." And he several times referred it to them to advise upon the subject of peace. But the Commons showed their humility or discretion by treating this as an invitation which it would show good manners to decline, though in the eighteenth of the king's reign they had joined with the Lords in imploring the king to make an end of the war by a battle or by a suitable peace.

III. *Right of the Commons to inquire into Public Abuses.*—A third important acquisition of the House of Commons during this reign was the establishment of their right to investigate and chastise the abuses of administration.

The most memorable example of the exercise of this right occurred in the fiftieth of Edward III. It will be remembered by every one who has read our history that in the latter years of Edward's life his fame was tarnished by the ascendency of the Duke of Lancaster and Alice Perrers. The for

mer, a man of more ambition than his capacity seems to have warranted, even incurred the suspicion of meditating to set aside the heir of the crown when the Black Prince should have sunk into the grave. Whether he were wronged or not by these conjectures, they certainly appear to have operated on those most concerned to take alarm at them. A Parliament met, in April, 1376, wherein the general unpopularity of the king's administration, or the influence of the Prince of Wales, led to very remarkable consequences.

The Commons alleged three particular grievances: the removal of the staple from Calais, where it had been fixed by Parliament, through the procurement and advice of the private counsellors about the king; the participation of the same persons in lending money to the king at exorbitant usury; and their purchasing at a low rate, for their own benefit, old debts from the crown, the whole of which they had afterwards induced the king to repay to themselves. For these and for many more misdemeanors the Commons accused and impeached the lords Latimer and Nevil, with four merchants, Lyons, Ellis, Peachey, and Bury. Latimer had been chamberlain, and Nevil held another office. The former was the friend and creature of the Duke of Lancaster. Nor was this Parliament at all nice in touching a point where kings least endure their interference. An ordinance was made that, "whereas many women prosecute the suits of others in courts of justice by way of maintenance, and to get profit thereby, which is displeasing to the king, he forbids any woman henceforward, and especially Alice Perrers, to do so, on pain of the said Alice forfeiting all her goods, and suffering banishment from the kingdom."

The part which the Prince of Wales, who had ever been distinguished for his respectful demeanor towards Edward, bore in this unprecedented opposition, is strong evidence of the jealousy with which he regarded the Duke of Lancaster; and it was led in the House of Commons by Peter de la Mare, a servant of the Earl of March, who, by his marriage with Philippa, heiress of Lionel, duke of Clarence, stood next after the young Prince Richard in lineal succession to the crown. The proceedings of this session were, indeed, highly popular. But no House of Commons would have gone such lengths on the mere support of popular opinion, unless instigated and encouraged by higher authority. Without this, their petitions might, perhaps, have obtained, for the sake of subsidy, an immediate consent; but those who took the lead in preparing them must have remained unsheltered after

dissolution, to abide the vengeance of the crown, with no assurance that another Parliament would espouse their cause as its own. Such, indeed, was their fate in the present instance. Soon after the dissolution of Parliament, the Prince of Wales, who, long sinking by fatal decay, had rallied his expiring energies for this domestic combat, left his inheritance to a child ten years old, Richard of Bordeaux. Immediately after this event Lancaster recovered his influence, and the former favorites returned to court. Peter de la Mare was confined at Nottingham, where he remained two years. The citizens, indeed, attempted an insurrection, and threatened to burn the Savoy, Lancaster's residence, if De la Mare were not released; but the Bishop of London succeeded in appeasing them. A Parliament met next year which overthrew the work of its predecessor, restored those who had been impeached, and repealed the ordinance against Alice Perrers. So little security will popular assemblies ever afford against arbitrary power, when deprived of regular leaders and the consciousness of mutual fidelity.

The policy adopted by the Prince of Wales and Earl of March, in employing the House of Commons as an engine of attack against an obnoxious ministry, was perfectly novel, and indicates a sensible change in the character of our constitution. In the reign of Edward II., Parliament had little share in resisting the Government; much more was effected by the barons through risings of their fendal tenantry. Fifty years of authority better respected, of law better enforced, had rendered these more perilous, and of a more violent appearance than formerly. A surer resource presented itself in the increased weight of the lower house in Parliament. And this indirect aristocratical influence gave a surprising impulse to that assembly, and particularly tended to establish beyond question its control over public abuses. It is no less just to remark that it also tended to preserve the relation and harmony between each part and the other, and to prevent that jarring of emulation and jealousy which, though generally found in the division of power between a noble and a popular estate, has scarcely ever caused a dissension, except in cases of little moment, between our two houses of Parliament.

§ 14. The Commons had sustained with equal firmness and discretion a defensive war against arbitrary power under Edward III.; they advanced with very different steps towards his successor. Upon the king's death, though Richard's coronation took place without delay, and no proper regency was

constituted, yet a council of twelve, whom the great officers of state were to obey, supplied its place to every effectual intent. Among these the Duke of Lancaster was not numbered, and he retired from court in some disgust. In the first Parliament of the young king a large proportion of the knights who had sat in that which impeached the Lancastrian party were returned. Peter de la Mare, now released from prison, was elected speaker. The prosecution against Alice Perrers was revived—not, as far as appears, by direct impeachment of the Commons; but articles were exhibited against her in the House of Lords on the king's part, for breaking the ordinance made against her intermeddling at court; upon which she received judgment of banishment and forfeiture. At the request of the lower house, the Lords, in the king's name, appointed nine persons of different ranks—three bishops, two earls, two bannerets, and two bachelors—to be a permanent council about the king, so that no business of importance should be transacted without their unanimous consent. The king was even compelled to consent that, during his minority, the chancellor, treasurer, judges, and other chief officers, should be made in Parliament; by which provision, combined with that of the Parliamentary council, the whole executive government was transferred to the two houses.

For the first few years of Richard's reign we find from the rolls repeated demands of subsidy on one side, remonstrance and endeavors at reformation on the other. But the power of the Commons steadily increases. After the tremendous insurrection of the villeins in 1382, a Parliament was convened to advise about repealing the charters of general manumission, extorted from the king by the pressure of circumstances. In this measure all concurred; but the Commons were not afraid to say that the late risings had been provoked by the burdens which a prodigal court had called for in the preceding session.

The character of Richard II. was now developing itself, and the hopes excited by his remarkable presence of mind in confronting the rioters on Blackheath were rapidly destroyed. Not that he was wanting in capacity, as has been sometimes imagined. For if we measure intellectual power by the greatest exertion it ever displays, rather than by its average results, Richard II. was a man of considerable talents. He possessed, along with much dissimulation, a decisive promptitude in seizing the critical moment for action. Of this quality, besides his celebrated behavior towards the

insurgents, he gave striking evidence in several circumstances which we shall have shortly to notice. But his ordinary conduct belied the abilities which on these rare occasions shone forth, and rendered them ineffectual for his security. Extreme pride and violence, with an inordinate partiality for the most worthless favorites, were his predominant characteristics.

Though no king could be less respectable than Richard, yet the constitution invested a sovereign with such ample prerogative, that it was far less easy to resist his personal exercise of power than the unsettled councils of a minority. Though the Commons did not relax in their importunities for the redress of general grievances, they did not venture to intermeddle as before with the conduct of administration. They did not even object to the grant of the marquisate of Dublin, with almost a princely dominion over Ireland; which enormous donation was confirmed by act of Parliament to Vere, a favorite of the king. A petition that the officers of state should annually visit and inquire into his household was answered that the king would do what he pleased.

There is nothing, however, more deceitful to a monarch unsupported by an armed force, and destitute of wary advisers, than this submission of his people. A single effort was enough to overturn his government. Parliament met in the tenth year of his reign, steadily determined to reform the administration, and especially to punish its chief leader, Michael de la Pole, earl of Suffolk and lord chancellor.

The charges against this minister, without being wholly frivolous, were not so weighty as the clamor of the Commons might have led us to expect. Besides forfeiting all his grants from the crown, he was committed to prison, there to remain till he should have paid such fine as the king might impose—a sentence that would have been outrageously severe in many cases, though little more than nugatory in the present.

This was the second precedent of that grand constitutional resource, Parliamentary impeachment; and more remarkable, from the eminence of the person attacked, than that of Lord Latimer in the fiftieth year of Edward III. The Commons were content to waive the prosecution of any other ministers; but they rather chose a scheme of reforming the administration which should avert both the necessity of punishment and the malversations that provoked it. They petitioned the king to ordain in Parliament certain chief offi-

cers of his household and other lords of his council, with power to reform those abuses by which his crown was so much blemished that the laws were not kept, and his revenues were dilapidated, confirming by a statute a commission for a year, and forbidding, under heavy penalties, any one from opposing, in private or openly, what they should advise. With this the king complied, and a commission founded upon the prayer of Parliament was established by statute. It comprehended fourteen persons of the highest eminence for rank and general estimation; princes of the blood and ancient servants of the crown, by whom its prerogatives were not likely to be unnecessarily impaired. Still, the design as well as tendency of this commission was no doubt to throw the whole administration into their hands during the period of their sway.

Many have exclaimed against this Parliamentary commission as an unwarrantable violation of the king's sovereignty, and even impartial men are struck at first sight by a measure that seems to overset the natural balance of our constitution. But it would be unfair to blame either those concerned in this commission, some of whose names at least have been handed down with unquestioned respect, or those high-spirited representatives of the people whose patriot firmness has been hitherto commanding all our sympathy and gratitude, unless we could distinctly pronounce by what gentler means they could restrain the excesses of goverment. Thirteen Parliaments had already met since the accession of Richard; in all the same remonstrances had been repeated, and the same promises renewed. Subsidies, more frequent than in any former reign, had been granted for the supposed exigencies of the war; but this was no longer illuminated by those dazzling victories which give to fortune the mien of wisdom: the coasts of England were perpetually ravaged, and her trade destroyed, while the administration incurred the suspicion of diverting to private uses that treasure which they so feebly and unsuccessfully applied to the public service. No voice of his people, until it spoke in thunder, would stop an intoxicated boy in the wasteful career of dissipation. He loved festivals and pageants, the prevailing folly of his time, with unusual frivolity; and his ordinary living is represented as beyond comparison more showy and sumptuous than even that of his magnificent and chivalrous predecessor. Acts of Parliament were no adequate barriers to his misgovernment. By yielding to the will of his Parliament and to a temporary suspension of prerogative, this

unfortunate prince might probably have reigned long and peacefully; the contrary course of acting led eventually to his deposition and miserable death.

Before the dissolution of Parliament, Richard made a verbal protestation that nothing done therein should be in prejudice of his rights—a reservation not unusual when any remarkable concession was made, but which could not decently be interpreted, whatever he might mean, as a dissent from the statute just passed. Some months had intervened when the king, who had already released Suffolk from prison and restored him to his favor, procured from the judges, whom he had summoned to Nottingham, a most convenient set of answers to questions concerning the late proceedings in Parliament. Tresilian and Belknap, chief justices of the King's Bench and Common Pleas, with several other judges, gave it under their seals that the late statute and commission were derogatory to the prerogative; that all who procured it to be passed, or persuaded or compelled the king to consent to it, were guilty of treason; that the king's business must be proceeded upon before any other in Parliament; that he may put an end to the session at his pleasure; that his ministers can not be impeached without his consent; that any members of Parliament contravening the three last articles incur the penalties of treason, and especially he who moved for the sentence of deposition against Edward II. to be read; and that the judgment against the Earl of Suffolk might be revoked as altogether erroneous.

These answers, perhaps extorted by menaces, as all the judges, except Tresilian, protested before the next Parliament, were for the most part servile and unconstitutional. The indignation which they excited, and the measures successfully taken to withstand the king's designs, belong to general history; but I shall pass slightly over that season of turbulence, which afforded no legitimate precedent to our constitutional annals. Of the five lords appellants, as they were called—Gloucester, Derby, Nottingham, Warwick, and Arundel—the three former, at least, have little claim to our esteem; but in every age it is the sophism of malignant and peevish men to traduce the cause of freedom itself, on account of the interested motives by which its ostensible advocates have frequently been actuated. The Parliament, who had the country thoroughly with them, acted no doubt honestly, but with an inattention to the rules of law, culpable indeed, yet from which the most civilized of their successors, in the heat of passion and triumph, have scarcely been

exempt. Whether all with whom they dealt severely, some of them apparently of good previous reputation, merited such punishment, is more than, upon uncertain evidence, a modern writer can profess to decide.

Notwithstanding the death or exile of all Richard's favorites, and the oath taken not only by Parliament, but by every class of the people, to stand by the lords appellants, we find him, after about a year, suddenly annihilating their pretensions, and snatching the reins again without obstruction. The secret cause of this event is among the many obscurities that attend the history of his reign. It was conducted with a spirit and activity which broke out two or three times in the course of his imprudent life; but we may conjecture that he had the advantage of disunion among his enemies. For some years after this the king's administration was prudent. The great seal, which he took away from Archbishop Arundel, he gave to Wykeham, bishop of Winchester, another member of the reforming commission, but a man of great moderation and political experience. Some time after he restored the seal to Arundel, and reinstated the Duke of Gloucester in the council. The Duke of Lancaster, who had been absent during the transactions of the tenth and eleventh years of the king, in prosecution of his Castilian war, formed a link between the parties, and seems to have maintained some share of public favor.

There was now a more apparent harmony between the court and the Parliament. It seems to have been tacitly agreed that they should not interfere with the king's household expenses; and they gratified him in a point where his honor had been most wounded, declaring his prerogative to be as high and unimpaired as that of his predecessors, and repealing the pretended statute by virtue of which Edward II. was said to have been deposed. They were provident enough, however, to grant conditional subsidies, to be levied only in case of a royal expedition against the enemy; and several were accordingly remitted by proclamation, this condition not being fulfilled. Richard never ventured to recall his favorites, though he testified his unabated affection for Vere by a pompous funeral. Few complaints unequivocally affecting the ministry were presented by the Commons. In one Parliament, the chancellor, treasurer, and counsel resigned their offices, submitting themselves to its judgment in case any matter of accusation should be alleged against them. The Commons, after a day's deliberation, probably to make their approbation appear more solemn, declared in full

Parliament that nothing amiss had been found in the conduct of these ministers, and that they held them to have faithfully discharged their duties. The king reinstated them accordingly, with a protestation that this should not be made a precedent, and that it was his right to change his servants at pleasure.

But this summer season was not to last forever. Richard had but dissembled with those concerned in the transactions of 1388, none of whom he could ever forgive. These lords, in lapse of time, were divided among each other. The earls of Derby and Nottingham were brought into the king's interest. The Earl of Arundel came to an open breach with the Duke of Lancaster, whose pardon he was compelled to ask for an unfounded accusation in Parliament. Gloucester's ungoverned ambition, elated by popularity, could not brook the ascendency of his brother Lancaster, who was much less odious to the king. And the latter had given keener provocation by speaking contemptuously of that misalliance with Katherine Swineford which contaminated the blood of Plantagenet. To the Parliament summoned in the 20th of Richard, one object of which was to legitimate the Duke of Lancaster's ante-nuptial children by this lady, neither Gloucester nor Arundel would repair. There passed in this assembly something remarkable, as it exhibits not only the arbitrary temper of the king, a point by no means doubtful, but the inefficiency of the Commons to resist it without support from political confederacies of the nobility. The circumstances are thus related in the record:

During the session the king sent for the lords into Parliament one afternoon, and told them how he had heard of certain articles of complaint made by the Commons in conference with them a few days before, some of which appeared to the king against his royalty, estate, and liberty, and commanded the chancellor to inform him fully as to this. The chancellor accordingly related the whole matter, which consisted of four alleged grievances—namely, that sheriffs and escheators, notwithstanding a statute, are continued in their offices beyond a year;[10] that the Scottish marches were not

[10] Hume has represented this as if the Commons had petitioned for the continuance of sheriffs beyond a year, and grounds upon this mistake part of his defense of Richard II. (Note to vol. ii., p. 270, 4to edit.) For this he refers to Cotton's Abridgment; whether rightly or not I can not say, being little acquainted with that inaccurate book, upon which it is unfortunate that Hume relied so much. The passage from Walsingham in the same note is also wholly perverted; as the reader will discover without further observation. An historian must be strangely warped who quotes a passage explicitly complaining of illegal acts in order to infer that those very acts were legal

well kept; that the statute against wearing great men's liveries was disregarded; and, lastly, that the excessive charges of the king's household ought to be diminished, arising from the multitude of bishops and of ladies who are there maintained at his cost.

Upon this information the king declared to the Lords that through God's gift he is by lineal right of inheritance King of England, and will have the royalty and freedom of his crown, from which some of these articles derogate. The first petition, that sheriffs should never remain in office beyond a year, he rejected; but, passing lightly over the rest, took most offense that the Commons, who are his lieges, should take on themselves to make any ordinance respecting his royal person or household, or those whom he might please to have about him. He enjoined, therefore, the Lords to declare plainly to the Commons his pleasure in this matter; and especially directed the Duke of Lancaster to make the speaker give up the name of the person who presented a bill for this last article in the lower house.

The Commons were in no state to resist this unexpected promptitude of action in the king. They surrendered the obnoxious bill, with its proposer, one Thomas Haxey, and with great humility made excuse that they never designed to give offense to his majesty, nor to interfere with his household or attendants, knowing well that such things do not belong to them, but to the king alone; but merely to draw his attention, that he might act therein as should please him best. The king forgave these pitiful suppliants; but Haxey was adjudged in Parliament to suffer death as a traitor. As, however, he was a clerk,[11] the Archbishop of Canterbury, at the head of the prelates, obtained of the king that his life might be spared, and that they might have the custody of his person; protesting that this was not claimed by way of right, but merely of the king's grace.[12]

This was an open defiance of Parliament, and a declaration of arbitrary power; for it would be impossible to contend

[11] The record calls him Sir Thomas Haxey, a title at that time regularly given to the parson of a parish. If this be so, it is a remarkable authority for the clergy's capacity of sitting in Parliament.

[12] In Henry IV.'s first Parliament the Commons petitioned for Haxey's restoration, and truly say that his sentence was en aneantissement des custumes de la commune, p. 434. His judgment was reversed by both houses. There can be no doubt with any man who looks attentively at the passages relative to Haxey that he was a member of Parliament; though this was questioned some years ago by the committee of the House of Commons, who made a report on the right of the clergy to be elected; a right which, I am inclined to believe, did exist down to the Reformation, as the grounds alleged for Nowell's expulsion in the first of Mary, besides this instance of Haxey, conspire to prove, though it has since been lost by disuse.

that, after the repeated instances of control over public expenditure by the Commons since the 50th of Edward III., this principle was novel and unauthorized by the constitution, or that the right of free speech demanded by them in every Parliament was not a real and indisputable privilege. The king, however, was completely successful, and, having proved the feebleness of the Commons, fell next upon those he more dreaded. By a skillful piece of treachery he seized the Duke of Gloucester, and spread consternation among all his party. A Parliament was summoned, in which the only struggle was to outdo the king's wishes, and thus to efface their former transgressions. Gloucester, who had been murdered at Calais, was attainted after his death; Arundel was beheaded, his brother, the Archbishop of Canterbury, deposed and banished, Warwick and Cobham sent beyond sea. The commission of the tenth, the proceedings in Parliament of the eleventh, year of the king were annulled. The answers of the judges to the questions put at Nottingham, which had been punished with death and exile, were pronounced by Parliament to be just and legal. It was declared high treason to procure the repeal of any judgment against persons therein impeached. Their issue male were disabled from ever sitting in Parliament or holding place in council. These violent ordinances, as if the precedent they were then overturning had not shielded itself with the same sanction, were sworn to by Parliament upon the cross of Canterbury, and confirmed by a national oath, with the penalty of excommunication denounced against its infringers. Of those recorded to have bound themselves by this adjuration to Richard, far the greater part had touched the same relics for Gloucester and Arundel ten years before, and two years afterwards swore allegiance to Henry of Lancaster.

In the fervor of prosecution this Parliament could hardly go beyond that whose acts they were annulling; and each is alike unworthy to be remembered in the way of precedent. But the leaders of the former, though vindictive and turbulent, had a concern for the public interest; and, after punishing their enemies, left the government upon its right foundation. In this all regard for liberty was extinct; and the Commons set the dangerous precedent of granting the king a subsidy upon wool during his life. Their remarkable act of severity was accompanied by another, less unexampled, but, as it proved, of more ruinous tendency. The petitions of the Commons not having been answered during the session, which they were always anxious to conclude, a commis-

sion was granted for twelve peers and six commoners to sit after the dissolution, and "examine, answer, and fully determine, as well all the said petitions, and the matters therein comprised, as all other matters and things moved in the king's presence, and all things incident thereto not yet determined, as shall seem best to them." The "other matters" mentioned above were, I suppose, private petitions to the king's council in Parliament, which had been frequently dispatched after a dissolution. For in the statute which establishes this commission, 21 R. II., c. 16, no powers are committed but those of examining petitions; which, if it does not confirm the charge afterwards alleged against Richard, of falsifying the Parliament roll, must, at least, be considered as limiting and explaining the terms of the latter. Such a trust had been committed to some lords of the council eight years before, in very peaceful times; and it was even requested that the same might be done in future Parliaments. But it is obvious what a latitude this gave to a prevailing faction. These eighteen commissioners, or some of them (for there were who disliked the turn of affairs), usurped the full rights of the legislature, which undoubtedly were only delegated in respect of business already commenced. They imposed a perpetual oath on prelates and lords for all time to come, to be taken before obtaining livery of their lands, that they would maintain the statutes and ordinances made by this Parliament, or "afterwards by the lords and knights having power committed to them by the same." They declared it high treason to disobey their ordinances. They annulled the patents of the dukes of Hereford and Norfolk, and adjudged Henry Bowet, the former's chaplain, who had advised him to petition for his inheritance, to the penalties of treason. And thus, having obtained a revenue for life, and the power of Parliament being notoriously usurped by a knot of his creatures, the king was little likely to meet his people again, and became as truly absolute as his ambition could require.

It had been necessary for this purpose to subjugate the ancient nobility; for the English constitution gave them such paramount rights that it was impossible either to make them surrender their country's freedom or to destroy it without their consent. But several of the chief men had fallen or were involved with the party of Gloucester. Two, who, having once belonged to it, had lately plunged into the depths of infamy to ruin their former friends, were still perfectly obnoxious to the king, who never forgave their original sin. These two, Henry of Bolingbroke, earl of Derby, and Mow-

bray, earl of Nottingham, now dukes of Hereford and Norfolk, the most powerful of the remaining nobility, were, by a singular conjuncture, thrown, as it were, at the king's feet. Of the political mysteries which this reign affords, none is more inexplicable than the quarrel of these peers. In the Parliament at Shrewsbury, in 1398, Hereford was called upon by the king to relate what had passed between the Duke of Norfolk and himself in slander of his majesty. He detailed a pretty long and not improbable conversation, in which Norfolk had asserted the king's intention of destroying them both for their old offense in impeaching his ministers. Norfolk had only to deny the charge and throw his gauntlet at the accuser. It was referred to the eighteen commissioners who sat after the dissolution, and a trial by combat was awarded. But when this, after many delays, was about to take place at Coventry, Richard interfered and settled the dispute by condemning Hereford to banishment for ten years and Norfolk for life. This strange determination, which treated both as guilty where only one could be so, seems to admit of no other solution than the king's desire to rid himself of two peers, whom he feared and hated, at a blow. But it is difficult to understand by what means he drew the crafty Bolingbroke into his snare. However this might have been, he now threw away all appearance of moderate government. The indignities he had suffered in the eleventh year of his reign were still at his heart, a desire to revenge which seems to have been the mainspring of his conduct. Though a general pardon of those proceedings had been granted, not only at the time, but in his own last Parliament, he made use of them as a pretense to extort money from seventeen counties, to whom he imputed a share in the rebellion. He compelled men to confess under their seals that they had been guilty of treason, and to give blank obligations, which his officers filled up with large sums. Upon the death of the Duke of Lancaster, who had passively complied throughout all these transactions, Richard refused livery of his inheritance to Hereford, whose exile implied no crime, and who had letters patent enabling him to make his attorney for that purpose during its continuance. In short, his government for nearly two years was altogether tyrannical; and, upon the same principles that cost James II. his throne, it was unquestionably far more necessary, unless our fathers would have abandoned all thought of liberty, to expel Richard II. Far be it from us to extenuate the treachery of the Percies towards this unhappy prince, or the cruel circumstances of his death,

or in any way to extol either his successor or the chief men of that time, most of whom were ambitious and faithless; but after such long experience of the king's arbitrary, dissembling, and revengeful temper, I see no other safe course, in the actual state of the constitution, than what the nation concurred in pursuing.

The reign of Richard II. is, in a constitutional light, the most interesting part of our earlier history; and it has been the most imperfectly written. Some have misrepresented the truth through prejudice, and others through carelessness. It is only to be understood—and, indeed, there are great difficulties in the way of understanding it at all—by a perusal of the rolls of Parliament, with some assistance from the contemporary historians, Walsingham, Knyghton, the anonymous biographer published by Hearne, and Froissart. These, I must remark, except occasionally the last, are extremely hostile to Richard; and although we are far from being bound to acquiesce in their opinions, it is at least unwarrantable in modern writers to sprinkle their margins with references to such authority in support of positions decidedly opposite.[12]

§ 15. The revolution which elevated Henry IV. to the throne was certainly so far accomplished by force that the king was in captivity, and those who might still adhere to him in no condition to support his authority. But the sincere concurrence which most of the prelates and nobility, with the mass of the people, gave to changes that could not have been otherwise effected by one so unprovided with foreign support as Henry, proves this revolution to have been, if not an indispensable, yet a national act, and should prevent our considering the Lancastrian kings as usurpers of the throne. Nothing, indeed, looks so much like usurpation in the whole transaction as Henry's remarkable challenge of the crown, insinuating, though not avowing, as Hume has justly animadverted upon it, a false and ridiculous title by right line of descent, and one equally unwarrantable by conquest. The course of proceedings is worthy of notice. As the renunciation of Richard might well pass for the effect of compulsion, there was a strong reason for propping up its instability by a solemn deposition from the throne, founded upon specific charges of misgovernment. Again, as the

[12] It is fair to observe that Froissart's testimony makes most in favor of the king, or rather against his enemies, where it is most valuable; that is, in his account of what he heard in the English court in 1395, l. iv., c. 62, where he gives a very indifferent character of the Duke of Gloucester. In general this writer is ill-informed of English affairs, and undeserving to be quoted as an authority.

right of dethroning a monarch was nowhere found in the law, it was equally requisite to support this assumption of power by an actual abdication. But as neither one nor the other filled up the Duke of Lancaster's wishes, who was not contented with owing a crown to election, nor seemed altogether to account for the exclusion of the house of March, he devised this claim, which was preferred in the vacancy of the throne, Richard's cession having been read and approved in Parliament, and the sentence of deposition, "out of abundant caution, and to remove all scruple," solemnly passed by seven commissioners appointed out of the several estates. "After which challenge and claim," says the record, "the lords spiritual and temporal, and all the estates there present, being asked, separately and together, what they thought of the said challenge and claim, the said estates, with the whole people, without any difficulty or delay, consented that the said duke should reign over them." The claim of Henry, as opposed to that of the Earl of March, was, indeed, ridiculous; but it is by no means evident that, in such cases of extreme urgency as leave no security for the common weal but the deposition of a reigning prince, there rests any positive obligation upon the estates of the realm to fill his place with the nearest heir. A revolution of this kind seems rather to defeat and confound all prior titles; though in the new settlement it will commonly be prudent, as well as equitable, to treat them with some regard. Were this otherwise, it would be hard to say why William III. reigned to the exclusion of Anne, or even of the Pretender, who had surely committed no offense at that time; or why (if such, indeed, be the true construction of the Act of Settlement) the more distant branches of the royal stock, descendants of Henry VII. and earlier kings, have been cut off from their hope of succession by the restriction to the heirs of the Princess Sophia.

In this revolution of 1399 there was as remarkable an attention shown to the formalities of the constitution, allowance made for the men and the times, as in that of 1688. The Parliament was not opened by commission; no one took the office of president; the Commons did not adjourn to their own chamber; they chose no speaker; the name of Parliament was not taken, but that only of estates of the realm. But as it would have been a violation of constitutional principles to assume a parliamentary character without the king's commission, though summoned by his writ, so it was still more essential to limit their exercise of power to the necessity of circumstances. Upon the cession of the king, as upon

his death, the Parliament was no more; its existence, as the council of the sovereign, being dependent upon his will. The actual convention summoned by the writs of Richard could not legally become the Parliament of Henry; and the validity of a statute declaring it to be such would probably have been questionable in that age, when the power of statutes to alter the original principles of the common law was by no means so thoroughly recognized as at the Restoration and Revolution. Yet Henry was too well pleased with his friends to part with them so readily; and he had much to effect before the fervor of their spirits should abate. Hence an expedient was devised of issuing writs for a new Parliament, returnable in six days. These neither were nor could be complied with; but the same members as had deposed Richard sat in the new Parliament, which was regularly opened by Henry's commissioner as if they had been duly elected. In this contrivance, more than in all the rest, we may trace the hand of lawyers.

§ 16. If we look back from the accession of Henry IV. to that of his predecessor, the constitutional authority of the House of Commons will be perceived to have made surprising progress during the course of twenty-two years. Of the three capital points in contest while Edward reigned—that money could not be levied, or laws enacted, without the Commons' consent, and that the administration of Government was subject to their inspection and control—the first was absolutely decided in their favor, the second was at least perfectly admitted in principle, and the last was confirmed by frequent exercise. The Commons had acquired two additional engines of immense efficiency—one, the right of directing the application of subsidies, and calling accountants before them; the other, that of impeaching the king's ministers for misconduct. All these vigorous shoots of liberty throve more and more under the three kings of the house of Lancaster, and drew such strength and nourishment from the generous heart of England that in after-times, and in a less prosperous season, though checked and obstructed in their growth, neither the blasts of arbitrary power could break them off, nor the mildew of servile opinion cause them to wither. I shall trace the progress of Parliament till the civil wars of York and Lancaster: 1, in maintaining the exclusive right of taxation; 2, in directing and checking the public expenditure; 3, in making supplies depend on the redress of grievances; 4, in securing the people against illegal ordinances and interpolations of the statutes; 5, in controlling the royal administration; 6,

in punishing bad ministers; and lastly, in establishing their own immunities and privileges.

1. *Right of Taxation.*—The pretense of levying money without consent of Parliament expired with Edward III., who had asserted it, as we have seen, in the very last year of his reign. A great council of lords and prelates, summoned in the second year of his successor, declared that they could advise no remedy for the king's necessities without laying taxes on the people, which could only be granted in Parliament. Nor was Richard ever accused of illegal tallages, the frequent theme of remonstrance under Edward. Doubtless his innocence in this respect was the effect of weakness; and if the revolution of 1399 had not put an end to this newly-acquired despotism, this, like every other right of his people, would have been swept away. A less palpable means of evading the consent of the Commons was by the extortion of loans, and harassing those who refused to pay by summonses before the council. These loans, the frequent resource of arbitrary sovereigns in later times, are first complained of in an early Parliament of Richard II.; and a petition is granted that no man shall be compelled to lend the king money. But how little this was regarded we may infer from a writ directed, in 1386, to some persons in Boston, enjoining them to assess every person who had goods and chattels to the amount of twenty pounds, in his proportion of two hundred pounds, which the town had promised to lend the king, and giving an assurance that this shall be deducted from the next subsidy to be granted by Parliament. After his triumph over the popular party, towards the end of his reign, he obtained large sums in this way.

Under the Lancastrian kings there is much less appearance of raising money in an unparliamentary course. Henry IV. obtained an aid from a great council in the year 1400; but they did not pretend to charge any besides themselves, though it seems that some towns afterwards gave the king a contribution. A few years afterwards he directs the sheriffs to call on the richest men in their counties to advance the money voted by Parliament. This, if any compulsion was threatened, is an instance of overstrained prerogative, though consonant to the practice of the late reign.

2. *Appropriation of Supplies.*—The right of granting supplies would have been very incomplete, had it not been accompanied with that of directing their application. The principle of appropriating public moneys began, as we have seen, in the minority of Richard, and was among the best fruits of

that period. It was steadily maintained under the new dynasty. The Parliament of 6 Henry IV. granted two-fifteenths and two-tenths, with a tax on skins and wool, on condition that it should be expended in the defense of the kingdom, and not otherwise, as Thomas lord Furnival and Sir John Pelham, ordained treasurers of war for this Parliament to receive the said subsidies, shall account and answer to the Commons at the next Parliament. These treasurers were sworn in Parliament to execute their trusts. A similar precaution was adopted in the next session.

3. *Redress of Grievances.*—The Commons made a bold attempt in the second year of Henry IV. to give the strongest security to their claims of redress, by inverting the usual course of parliamentary proceedings. It was usual to answer their petitions on the last day of the session, which put an end to all further discussion upon them, and prevented their making the redress of grievances a necessary condition of supply. They now requested that an answer might be given before they made their grant of subsidy. This was one of the articles which Richard II.'s judges had declared it high treason to attempt. Henry was not inclined to make a concession which would virtually have removed the chief impediment to the ascendency of Parliament. He first said that he would consult with the Lords, and answer according to their advice. On the last day of the session the Commons were informed that "it had never been known in the time of his ancestors that they should have their petitions answered before they had done all their business in Parliament, whether of granting money or any other concern; wherefore the king will not alter the good customs and usages of ancient times."

Notwithstanding the just views these Parliaments appear generally to have entertained of their power over the public purse, that of the third of Henry V. followed a precedent from the worst times of Richard II., by granting the king a subsidy on wool and leather during his life. This, an historian tells us, Henry IV. had vainly labored to obtain; but the taking of Harfleur intoxicated the English with new dreams of conquest in France, which their good sense and constitutional jealousy were not firm enough to resist. The continued expenses of the war, however, prevented this grant from becoming so dangerous as it might have been in a season of tranquillity. Henry V., like his father, convoked Parliament almost in every year of his reign.

4. *Legislative Rights.*—It had long been out of all question

that the legislature consisted of the king, Lords, and Commons; or, in stricter language, that the king could not make or repeal statutes without the consent of Parliament. But this fundamental maxim was still frequently defeated by various acts of evasion or violence; which, though protested against as illegal, it was a difficult task to prevent. The king sometimes exerted a power of suspending the observance of statutes, as in the ninth of Richard II., when a petition that all statutes might be confirmed is granted, with an exception as to one passed in the last Parliament, forbidding the judges to take fees or give counsel in cases where the king was a party; which, "because it was too severe and needs declaration, the king would have of no effect till it should be declared in Parliament."

The dispensing power, as exercised in favor of individuals, is quite of a different character from this general suspension of statutes, but indirectly weakens the sovereignty of the legislature. This power was exerted, and even recognized, throughout all the reigns of the Plantagenets. In the first of Henry V. the Commons pray that the statute for driving aliens out of the kingdom be executed. The king assents, saving his prerogative and his right of dispensing with it when he pleased. To which the Commons replied that their intention was never otherwise, nor, by God's help, ever should be. At the same time one Rees ap Thomas petitions the king to modify, or dispense with, the statute prohibiting Welshmen from purchasing lands in England, or the English towns in Wales; which the king grants. In the same Parliament the Commons pray that no grant or protection be made to any one in contravention to the statute of provisors, saving the king's prerogative. He merely answers, "Let the statutes be observed;" evading any allusion to his dispensing power.

The practice of leaving statutes to be drawn up by the judges, from the petition and answer jointly, after a dissolution of Parliament, presented an opportunity of falsifying the intention of the legislature, whereof advantage was often taken. Some very remarkable instances of this fraud occurred in the reigns of Richard II. and Henry IV.

An ordinance was put upon the roll of Parliament, in the fifth of Richard II., empowering sheriffs of counties to arrest preachers of heresy and their abettors, and detain them in prison till they should justify themselves before the Church. This was introduced into the statutes of the year; but the assent of Lords and Commons is not expressed. In the next

Parliament the Commons, reciting this ordinance, declare that it was never assented to nor granted by them, but what had been proposed in this matter was without their concurrence (that is, as I conceive, had been rejected by them), and pray that this statute be annulled; for it was never their intent to bind themselves or their descendants to the bishops more than their ancestors had been bound in times past. The king returned an answer agreeing to this petition. Nevertheless the pretended statute was untouched, and remains still among our laws,[14] unrepealed, except by desuetude, and by inference from the acts of much later times.

This commendable reluctance of the Commons to let the clergy forge chains for them produced, as there is much appearance, a similar violation of their legislative rights in the next reign. The statute against heresy in the second of Henry IV. is not grounded upon any petition of the Commons, but only upon one of the clergy. It is said to be enacted by consent of the Lords; but no notice is taken of the lower house in the Parliament roll, though the statute reciting the petition asserts the Commons to have joined in it. The petition and the statute are both in Latin, which is unusual in the laws of this time. In a subsequent petition of the Commons this act is styled "the statute made in the second year of your majesty's reign at the request of the prelates and clergy of your kingdom;" which affords a presumption that it had no regular assent of Parliament. And the spirit of the Commons during this whole reign being remarkably hostile to the Church, it would have been hardly possible to obtain their consent to so penal a law against heresy. Several of their petitions seem designed indirectly to weaken its efficacy.

These infringements of their most essential right were resisted by the Commons in various ways, according to the measure of their power. But even where there was no design to falsify the roll it was impossible to draw up statutes which should be in truth the acts of the whole legislature, so long as the king continued to grant petitions in part, and to ingraft new matter upon them. Such was still the case till the Commons hit upon an effectual expedient for screening

[14] 5 R. II., stat. 2, c. 5; Rot. Parl. 6 R. II., p. 141. Some other instances of the Commons attempting to prevent these unfair practices are adduced by Ruffhead, in his preface to the Statutes, and in Prynne's preface to Cotton's Abridgment of the Records. The act 13 R. II., stat. 1, c. 15, that the king's castles and jails which had been separated from the body of the adjoining counties should be reunited to them, is not founded upon any petition that appears on the roll; and probably, by making search, other instances equally flagrant might be discovered.

themselves against these encroachments, which has lasted without alteration to the present day. This was the introduction of complete statutes under the name of bills, instead of the old petitions; and these containing the royal assent and the whole form of a law, it became, though not quite immediately, a constant principle that the king must admit or reject them without qualification. This alteration, which wrought an extraordinary effect on the character of our constitution, was gradually introduced in Henry VI.'s reign.

From the first years of Henry V., though not, I think, earlier, the Commons began to concern themselves with the petitions of individuals to the Lords or Council. The nature of the jurisdiction exercised by the latter will be treated more fully hereafter; it is only necessary to mention in this place that many of the requests preferred to them were such as could not be granted without transcending the boundaries of law. A just inquietude as to the encroachments of the king's council had long been manifested by the Commons; and finding remonstrances ineffectual, they took measures for preventing such usurpations of legislative power by introducing their own consent to private petitions. These were now presented by the hands of the Commons, and in very many instances passed in the form of statutes with the express assent of all parts of the legislature. Such was the origin of private bills, which occupy the greater part of the rolls in Henry V. and VI.'s Parliament.

5. *Controlling the Royal Expenditure.*—If the strength of the Commons had lain merely in the weakness of the crown, it might be inferred that such harassing interference with the administration of affairs as the youthful and frivolous Richard was compelled to endure would have been sternly repelled by his experienced successor. But, on the contrary, the spirit of Richard might have rejoiced to see that his mortal enemy suffered as hard usage at the hands of Parliament as himself. After a few years the government of Henry became extremely unpopular. Perhaps his dissension with the great family of Percy, which had placed him on the throne, and was regarded with partiality by the people, chiefly contributed to this alienation of their attachment. The Commons requested, in the fifth of his reign, that certain persons might be removed from the court; the Lords concurred in displacing four of these, one being the king's confessor. Henry came down to Parliament and excused these four persons, as knowing no special cause why they should be removed; yet, well understanding that what the Lords and

Commons should ordain would be for his and his kingdom's interest, and therefore anxious to conform himself to their wishes, consented to the said ordinance, and charged the persons in question to leave his palace; adding, that he would do as much by any other about his person whom he should find to have incurred the ill affection of his people.

But no Parliament came near, in the number and boldness of its demands, to that held in the eighth year of Henry IV. The Commons presented thirty-one articles, none of which the king ventured to refuse, though pressing very severely upon his prerogative. He was to name sixteen counsellors, by whose advice he was solely to be guided, none of them to be dismissed without conviction of misdemeanor. The chancellor and privy seal to pass no grants or other matter contrary to law. Any persons about the court stirring up the king or queen's minds against their subjects, and duly convicted thereof, to lose their offices and be fined. The king's ordinary revenue was wholly appropriated to his household and the payment of his debts; no grant of wardship or other profit to be made thereout, nor any forfeiture to be pardoned. The king, "considering the wise government of other Christian princes, and conforming himself thereto," was to assign two days in the week for petitions, "it being an honorable and necessary thing that his lieges, who desired to petition him, should be heard." No judicial officer, nor any in the revenue or household, to enjoy his place for life or term of years. No petition to be presented to the king by any of his household at times when the council were not sitting. The council to determine nothing cognizable at common law, unless for a reasonable cause and with consent of the judges. The statutes regulating purveyance were affirmed—abuses of various kinds in the council and in courts of justice enumerated and forbidden—elections of knights for counties put under regulation. The council and officers of state were sworn to observe the common law and all statutes, those especially just enacted.

It must strike every reader that these provisions were of themselves a noble fabric of constitutional liberty, and hardly perhaps inferior to the petition of right under Charles I. We can not account for the submission of Henry to conditions far more derogatory than ever were imposed on Richard, because the secret politics of his reign are very imperfectly understood.

Power deemed to be ill gotten is naturally precarious; and the instance of Henry IV. has been well quoted to

prove that public liberty flourishes with a bad title in the sovereign. None of our kings seem to have been less beloved; and indeed he had little claim to affection. But what men denied to the reigning king they poured in full measure upon the heir of his throne. The virtues of the Prince of Wales are almost invidiously eulogized by those Parliaments who treat harshly his father; and these records afford a strong presumption that some early petulance or riot has been much exaggerated by the vulgar minds of our chroniclers. One can scarcely understand, at least, that a prince who was three years engaged in quelling the dangerous insurrection of Glendower, and who in the latter time of his father's reign presided at the council, was so lost in a cloud of low debauchery as common fame represents. Loved he certainly was throughout his life, as so intrepid, affable, and generous a temper well deserved; and this sentiment was heightened to admiration by successes still more rapid and dazzling than those of Edward III. During his reign there scarcely appears any vestige of dissatisfaction in Parliament —a circumstance very honorable, whether we ascribe it to the justice of his administration or to the affection of his people.

The Parliament confirmed the league of Henry V. with the Emperor Sigismund; and the treaty of Troyes, which was so fundamentally to change the situation of Henry and his successors, obtained, as it evidently required, the sanction of both houses of Parliament. These precedents conspiring with the weakness of the executive government, in the minority of Henry VI., to fling an increase of influence into the scale of the Commons, they made their concurrence necessary to all important business both of a foreign and domestic nature. Thus commissioners were appointed to treat of the deliverance of the King of Scots, the duchesses of Bedford and Gloucester were made denizens, and mediators were appointed to reconcile the dukes of Gloucester and Burgundy, by authority of the three estates assembled in Parliament. Leave was given to the dukes of Bedford and Gloucester, and others in the king's behalf, to treat of peace with France, by both houses of Parliament, in pursuance of an article in the treaty of Troyes, that no treaty should be set on foot with the dauphin without consent of the three estates of both realms. This article was afterwards repealed.

Some complaints are made by the Commons, even during the first years of Henry's minority, that the king's subjects underwent arbitrary imprisonment, and were vexed by

summonses before the council and by the newly-invented writ of subpœna out of chancery. But these are not so common as formerly; and so far as the rolls lead us to any inference, there was less injustice committed by the government under Henry VI. and his father than at any former period. Wastefulness, indeed, might justly be imputed to the regency, who had scandalously lavished the king's revenue. This ultimately led to an act for resuming all grants since his accession, founded upon a public declaration of the great officers of the crown that his debts amounted to £372,000, and the annual expense of the household amounted to £24,000, while the ordinary revenue was not more than £5000.

6. *Impeachment of Ministers.*—But before this time the sky had begun to darken, and discontent with the actual administration pervaded every rank. The causes of this are familiar—the unpopularity of the king's marriage with Margaret of Anjou, and her impolitic violence in the conduct of affairs, particularly the imputed murder of the people's favorite, the Duke of Gloucester. This provoked an attack upon her own creature, the Duke of Suffolk. Impeachment had lain still, like a sword in the scabbard, since the accession of Henry IV. In Suffolk's case the Commons seem to have proceeded by bill of attainder, or at least to have designed the judgment against that minister to be the act of the whole legislature; for they delivered a bill containing articles against him to the Lords, with a request that they would pray the king's majesty to enact that bill in Parliament, and that the said duke might be proceeded against upon the said articles in Parliament according to the law and custom of England. These articles contained charges of high treason, chiefly relating to his conduct in France, which, whether treasonable or not, seems to have been grossly against the honor and advantage of the crown. At a later day the Commons presented many other articles of misdemeanor. To the former he made a defense, in presence of the king as well as the Lords, both spiritual and temporal; and indeed the articles of impeachment were directly addressed to the king, which gave him a reasonable pretext to interfere in the judgment. But from apprehension, as it is said, that Suffolk could not escape conviction upon at least some part of these charges, Henry anticipated with no slight irregularity the course of legal trial, and, summoning the peers into a private chamber, informed the Duke of Suffolk, by mouth of his chancellor, that, inasmuch as he had not put himself upon his

peerage, but submitted wholly to the royal pleasure, the king, acquitting him of the first articles containing matter of treason, by his own advice and not that of the Lords, nor by way of judgment, not being in a place where judgment, could be delivered, banished him for five years from his dominions. The lords then present besought the king to let their protest appear on record, that neither they nor their posterity might lose their rights of peerage by this precedent. It was justly considered as an arbitrary stretch of prerogative, in order to defeat the privileges of Parliament and screen a favorite minister from punishment. But the course of proceeding by bill of attainder instead of regular impeachment was not judiciously chosen by the Commons.

Privilege of Parliament.—Privilege of Parliament, an extensive and singular branch of our constitutional law, begins to attract attention under the Lancastrian princes. It is true, indeed, that we can trace long before by records, and may infer with probability as to times whose records have not survived, one considerable immunity—a freedom from arrest for persons transacting the king's business in his national council. But in those rude times members of Parliament were not always respected by the officers executing legal process, and still less by the violators of law. After several remonstrances, which the crown had evaded, the Commons obtained the statute 11 Henry VI., c. 11, for the punishment of such as assault any on their way to the Parliament, giving double damages to the party. They had more difficulty in establishing, notwithstanding the old precedents in their favor, an immunity from all criminal process except in charges of treason, felony, and breach of the peace, which is their present measure of privilege. The most celebrated, however, of these early cases of privilege is that of Thomas Thorp, speaker of the Commons in 31 Henry VI. This person, who was, moreover, a baron of the Exchequer, had been imprisoned on an execution at suit of the Duke of York. The Commons sent some of their members to complain of a violation of privilege to the king and Lords in Parliament, and to demand Thorp's release. It was alleged by the Duke of York's counsel that the trespass done by Thorp was since the beginning of the Parliament, and the judgment thereon given in time of vacation, and not during the sitting. The Lords referred the question to the judges, who said, after deliberation, that "they ought not to answer to that question, for it hath not be used aforetyme that the judges should in any wise determine the privilege of this high court

of Parliament; for it is so high and so mighty in his nature that it may make law, and that that is law it may make no law; and the determination and knowledge of that privilege belongeth to the Lords of the Parliament, and not to the justices." They went on, however, after observing that a general writ of supersedeas of all processes upon ground of privilege had not been known to say that, "if any person that is a member of this high court of Parliament be arrested in such cases as be not for treason, or felony, or surety of the peace, or for a condemnation had before the Parliament, it is used that all such persons should be released of such arrests and make an attorney, so that they may have their freedom and liberty freely to intend upon the Parliament."

Notwithstanding this answer of the judges, it was concluded by the Lords that Thorp should remain in prison, without regarding the alleged privilege; and the Commons were directed in the king's name to proceed "with all goodly haste and speed" to the election of a new speaker. It is curious to observe that the Commons, forgetting their grievances, or content to drop them, made such haste and speed according to this command that they presented a new speaker for approbation the next day.

This case, as has been strongly said, was begotten by the iniquity of the times. The state was verging fast towards civil war; and Thorp, who afterwards distinguished himself for the Lancastrian cause, was an inveterate enemy of the Duke of York. That prince seems to have been swayed a little from his usual temper in procuring so unwarrantable a determination. In the reign of Edward IV. the Commons claimed privilege against any civil suit during the time of their session; but they had recourse, as before, to a particular act of Parliament to obtain a writ of supersedeas in favor of one Atwell, a member, who had been sued. The present law of privilege seems not to have been fully established, or at least effectually maintained, before the reign of Henry VIII.

No privilege of the Commons can be so fundamental as liberty of speech. This is claimed at the opening of every Parliament by their speaker, and could never be infringed without shaking the ramparts of the constitution. Richard II.'s attack upon Haxey has been already mentioned as a flagrant evidence of his despotic intentions. No other case occurs until the 33d year of Henry VI., when Thomas Young, member for Bristol, complained to the Commons that, "for matters by him showed in the house accustomed for the

Commons in the said Parliaments, he was therefore taken, arrested, and rigorously in open wise led to the Tower of London, and there grievously in great duress long time imprisoned against the said freedom and liberty;" with much more to the like effect. The Commons transmitted this petition to the Lords, and the king "willed that the lords of his council do and provide for the said suppliant as in their discretions shall be thought convenient and reasonable." This imprisonment of Young, however, had happened six years before, in consequence of a motion made by him that, the king then having no issue, the Duke of York might be declared heir-apparent to the crown. In the present session, when the duke was protector, he thought it well-timed to prefer his claim to remuneration.

There is a remarkable precedent in the 9th of Henry IV., and perhaps the earliest authority for two eminent maxims of Parliamentary law—that the Commons possess an exclusive right of originating money bills, and that the king ought not to take notice of matters pending in Parliament. A quarrel broke out between the two houses upon this ground; and as we have not before seen the Commons venture to clash openly with their superiors, the circumstance is for this additional reason worthy of attention. As it has been little noticed, I shall translate the whole record.[18]

[18] "Friday, the second day of December, which was the last day of the Parliament, the Commons came before the king and the Lords in Parliament, and there, by command of the king, a schedule of indemnity touching a certain altercation moved between the Lords and Commons was read; and on this it was commanded by our said lord the king that the said schedule should be entered of record in the roll of Parliament; of which schedule the tenor is as follows: Be it remembered, that on Monday, the 21st day of November, the king our sovereign lord being in the council-chamber in the abbey of Gloucester, the lords spiritual and temporal for this present Parliament assembled being then in his presence, a debate took place among them about the state of the kingdom, and its defense to resist the malice of the enemies who on every side prepare to molest the said kingdom and its faithful subjects, and how no man can resist this malice unless, for the safeguard and defense of his said kingdom, our sovereign lord the king has some notable aid and subsidy granted to him in his present Parliament. And therefore it was demanded of the said Lords by way of question what aid would be sufficient and requisite in these circumstances? To which question it was answered by the said Lords severally, that, considering the necessity of the king on one side and the poverty of his people on the other, no less aid could be sufficient than one-tenth and a half from cities and towns, and one-fifteenth and a half from all other lay persons; and, besides, to grant a continuance of the subsidy on wool, wool-fells, and leather, and of three shillings on the tun (of wine), and twelve pence on the pound (of other merchandise), from Michaelmas next ensuing for two years thenceforth. Whereupon, by command of our said lord the king, a message was sent to the Commons of this Parliament to cause a certain number of their body to come before our said lord the king and the Lords, in order to hear and report to their companions what they should be commanded by our said lord the king. And upon this the said Commons sent into the presence of our said lord the king and the said Lords twelve of their companions; to whom, by command of our said lord the king, the said question was declared, with the answer by the said Lords severally given to it. Which answer it was the pleasure of our said lord the

Every attentive reader will discover this remarkable passage to illustrate several points of constitutional law. For hence it may be perceived—first, that the king was used in those times, to be present at debates of the Lords, personally advising with them upon the public business; which also appears by many other passages on record; and this practice, I conceive, is not abolished by the king's present declaration, save as to grants of money, which ought to be of the free-will of Parliament, and without that fear or influence which the presence of so high a person might create: secondly, that it was already the established law of Parliament that the Lords should consent to the Commons' grant, and not the Commons to the Lords'; since it is the inversion of this order whereof the Commons complain, and it is said expressly that grants are made by the Commons, and agreed to by the Lords: thirdly, that the lower house of Parliament is not, in proper language, an estate of the realm, but rather the image and representative of the Commons of England; who, being the third estate, with the nobility and clergy make up and constitute the people of this kingdom and liege subjects of the crown.[16]

king that they should report to the rest of their fellows, to the end that they might take the shortest course to comply with the intention of the said Lords. Which report being thus made to the said commons, they were greatly disturbed at it, saying and asserting it to be much to the prejudice and derogation of their liberties. And after that our said lord the king had heard this, not willing that any thing should be done at present, or in time to come, that might anywise turn against the liberty of the estate for which they are come to Parliament, nor against the liberties of the said Lords, wills and grants and declares, by the advice and consent of the said Lords, as follows: to wit, that it shall be lawful for the Lords to debate together in this present Parliament, and in every other for time to come, in the king's absence, concerning the condition of the kingdom, and the remedies necessary for it. And in like manner it shall be lawful for the Commons, on their part, to debate together concerning the said condition and remedies. Provided always that neither the Lords on their part, nor the Commons on theirs, do make any report to our said lord the king of any grant granted by the Commons, and agreed to by the Lords, nor of the communications of the said grant, before that the said Lords and Commons are of one accord and agreement in this matter, and then in manner and form accustomed—that is to say, by the mouth of the speaker of the said Commons for the time being—to the end that the said Lords and Commons may have what they desire (avoir puissent leur gree) of our said lord the king. Our said lord the king willing, moreover, by the consent of the said Lords, that the communication had in this present Parliament as above be not drawn into precedent in time to come, nor be turned to the prejudice or derogation of the liberty of the estate for which the said Commons are now come, neither in this present Parliament nor in any other time to come. But wills that himself and all the other estates should be as free as they were before. Also, the said last day of Parliament, the said speaker prayed our said lord the king, on the part of the said Commons, that he would grant the said Commons that they should depart in as great liberty as other Commons had done before. To which the king answered that this pleased him well, and that at all times it had been his desire."

[16] A notion is entertained by many people, and not without the authority of some very respectable names, that the king is one of the three estates of the realm, the lords spiritual and temporal forming together the second, as the Commons in Parliament do the third. This is contradicted by the general tenor of our ancient records

It was not only in money bills that the originating power was supposed to reside in the Commons. The course of proceedings in Parliament, as has been seen, from the commencement at least of Edward III.'s reign, was that the Commons presented petitions, which the Lords by themselves, or with the assistance of the council, having duly considered, the sanction of the king was notified or withheld. This was so much according to usage, that on one occasion, when the Commons requested the advice of the other house on a matter before them, it was answered that the ancient custom and form of Parliament had ever been for the Commons to report their own opinion to the king and Lords, and not to the contrary; and the king would have the ancient and laudable usages of Parliament maintained. It is singular that, in the terror of innovation, the Lords did not discover how materially this usage of Parliament took off from their own legislative influence. The rule, however, was not observed in succeeding times; bills originated indiscriminately in either house; and indeed some acts of Henry V., which do not appear to be grounded on any petition, may be suspected, from the manner of their insertion in the rolls of Parliament, to have been proposed on the king's part to the Commons.

§ 17. Whoever may have been the original voters for county representatives, the first statute that regulates their election, so far from limiting the privilege to tenants in capite, appears to place it upon a very large and democratical foundation. For (as I rather conceive, though not without much hesitation) not only all freeholders, but all persons whatever present at the County Court, were declared, or rendered, capable of voting for the knight of their shire. Such at least seems to be the inference from the expressions of 7 Henry IV., c. 15, "all who are there present, as well suitors duly summoned for that cause as others." And this acquires some degree of confirmation from the later statute, 8 Henry VI., c. 7, which, reciting that "elections of knights of shires have now of late been made by very great, outrageous, and excessive number of people dwelling within the same counties, of the which most part was people of small substance and of no value," confines the elective franchise to freeholders of lands or tenements to the value of forty shillings.

and law-books; and indeed the analogy of other governments ought to have the greatest weight, even if more reason for doubt appeared upon the face of our own authorities. But the instances where the three estates are declared or implied to be the nobility, clergy, and commons, or at least their representatives in Parliament, are too numerous for insertion.

The representation of towns in Parliament was founded upon two principles—of consent to public burdens, and of advice in public measures, especially such as related to trade and shipping. Upon both these accounts it was natural for the kings who first summoned them to Parliament, little foreseeing that such half-emancipated burghers would ever clip the loftiest plumes of their prerogative, to make these assemblies numerous, and summon members from every town of consideration in the kingdom. Thus the writ of 23 Edward I. directs the sheriffs to cause deputies to be elected to a general council from every city, borough, and trading-town. And although the last words are omitted in subsequent writs, yet their spirit was preserved; many towns having constantly returned members to Parliament by regular summonses from the sheriffs, which were no chartered boroughs, nor had apparently any other claim than their populousness or commerce. These are now called boroughs by prescription.[17]

Besides these respectable towns, there were some of a less eminent figure which had writs directed to them as ancient demesnes of the crown. During times of arbitrary taxation the crown had set tallages alike upon its chartered boroughs and upon its tenants in demesne. When Parliamentary consent became indispensable, the free tenants in ancient demesne, or rather such of them as inhabited some particular vills, were called to Parliament among the other representatives of the Commons. They are usually specified distinctly from the other classes of representatives in grants of subsidies throughout the Parliaments of the first and second Edwards, till, about the beginning of the third's reign, they were confounded with ordinary burgesses. This is the foundation of that particular species of elective franchise incident to what we denominate burgage tenure; which, however, is not confined to the ancient demesne of the crown.

The proper constituents, therefore, of the citizens and burgesses in Parliament appear to have been—1. All chartered boroughs, whether they derived their privileges from the crown or from a mesne lord, as several in Cornwall did from Richard, king of the Romans; 2. All towns which were the ancient or the actual demesne of the crown; 3. All considerable places, though unincorporated, which could afford to defray the expenses of their representatives, and had a notable interest in the public welfare. But no Parliament ever

[17] The majority of prescriptive boroughs have prescriptive corporations which carry the legal, which is not always the moral, presumption of an original charter.

perfectly corresponded with this theory. The writ was addressed in general terms to the sheriff, requiring him to cause two knights to be elected out of the body of the county, two citizens from every city, and two burgesses from every borough. It rested altogether upon him to determine what towns should exercise this franchise; and it is really incredible, with all the carelessness and ignorance of those times, what frauds the sheriffs ventured to commit in executing this trust. Though Parliaments met almost every year, and there could be no mistake in so notorious a fact, it was the continual practice of sheriffs to omit boroughs that had been in recent habit of electing members, and to return upon the writ that there were no more within their county. Thus in the 12th of Edward III. the Sheriff of Wiltshire, after returning two citizens for Salisbury, and burgesses for two boroughs, concludes with these words: "There are no other cities or boroughs within my bailiwick." Yet, in fact, eight other towns had sent members to preceding Parliaments. So in the 6th of Edward II. the Sheriff of Bucks declared that he had no borough within his county except Wicomb; though Wendover, Agmondesham, and Marlow had twice made returns since that king's accession. And from this cause alone it has happened that many towns called boroughs, and having a charter and constitution as such, never returned members to Parliament; some of which are now among the most considerable in England—as Leeds, Birmingham, and Macclesfield.

It has been suggested, indeed, that these returns may not appear so false and collusive if we suppose the sheriff to mean only that there were no resident burgesses within these boroughs fit to be returned, or that the expense of their wages would be too heavy for the place to support. And no doubt the latter plea, whether implied or not in the return, was very frequently an inducement to the sheriffs to spare the smaller boroughs. The wages of knights were four shillings a day, levied on all freeholders, or at least on all holding by knight-service, within the county. Those of burgesses were half that sum;[18] but even this pittance was

[18] The wages of knights and burgesses were first reduced to this certain sum by the writs De levandis expensis, 16 Edward II. These were issued at the request of those who had served, after the dissolution of Parliament, and included a certain number of days, according to the distance of the county whence they came, for going and returning. It appears by these that thirty-five or forty miles were reckoned a day's journey; which may correct the exaggerated notions of bad roads and tardy locomotion that are sometimes entertained.

The latest entries of writs for expenses in the close rolls are of 2 Henry V.; but they may be proved to have issued much longer; and Prynne traces them to the end

raised with reluctance and difficulty from miserable burghers little solicitous about political franchises. Poverty, indeed, seems to have been accepted as a legal excuse.

The elective franchise was deemed by the boroughs no privilege or blessing, but rather, during the chief part of this period, an intolerable grievance. Where they could not persuade the sheriff to omit sending his writ to them they set it at defiance by sending no return. And this seldom failed to succeed, so that, after one or two refusals to comply, which brought no punishment upon them, they were left in quiet enjoyment of their insignificance.

The partiality of sheriffs in leaving out boroughs, which were accustomed in old time to come to the Parliament, was repressed, as far as law could repress it, by a statute of Richard II., which imposed a fine on them for such neglect, and upon any member of Parliament who should absent himself from his duty. But it is, I think, highly probable that a great part of those who were elected from the boroughs did not trouble themselves with attendance in Parliament. The sheriff even found it necessary to take sureties for their execution of so burdensome a duty, whose names it was usual, down to the end of the fifteenth century, to indorse upon the writ along with those of the elected. This expedient is not likely to have been very successful, and the statute of Richard II. produced no sensible effect.

By what persons the election of burgesses was usually made is a question of great obscurity. It appears to have been the common practice for a very few of the principal members of the corporation to make the election in the County Court, and their names, as actual electors, are generally returned upon the writ by the sheriff. But we can not surely be warranted by this to infer that they acted in any other capacity than as deputies of the whole body, and indeed it is frequently expressed that they chose such and such persons by the assent of the community; by which word, in an ancient corporate borough, it seems natural to understand the freemen participating in its general franchises, rather than the ruling body, which, in many instances at present, and always perhaps in the earliest age of corporations, derived its authority by delegation from the rest. The consent, however, of the inferior freemen we may easily believe to have been merely

of Henry VIII.'s reign, p. 547. Without the formality of this writ a very few instances of towns remunerating their burgesses for attendance in Parliament are known to have occurred in later times. Andrew Marvel is commonly said to have been the last who received this honorable salary.

nominal; and, from being nominal, it would in many places come by degrees not to be required at all—the corporation, specially so denominated, or municipal government, acquiring by length of usage an exclusive privilege in election of members of Parliament, as they did in local administration. This, at least, appears to me a more probable hypothesis than that of Dr. Brady, who limits the original right of election in all corporate boroughs to the aldermen or other capital burgesses.[19]

The members of the House of Commons, from this occasional disuse of ancient boroughs as well as from the creation of new ones, underwent some fluctuation during the period subject to our review. Two hundred citizens and burgesses sat in the Parliament held by Edward I. in his twenty-third year, the earliest epoch of acknowledged representation. But in the reigns of Edward III. and his three successors about ninety places, on an average, returned members, so that we may reckon this part of the Commons at one hundred and eighty. These, if regular in their duties, might appear an overbalance for the seventy-four knights who sat with them. But the dignity of ancient lineage, territorial wealth, and military character, in times when the feudal spirit was hardly extinct and that of chivalry at its height, made these burghers veil their heads to the landed aristocracy. It is pretty manifest that the knights, though doubtless with some support from the representatives of towns, sustained the chief brunt of battle against the crown. The rule and intention of our old constitution was, that each county, city, or borough should elect deputies out of its own body, resident among themselves, and consequently acquainted with their necessities and grievances. It would be very interesting to discover at what time, and by what degrees, the practice of election swerved from this strictness. But I have not been able to trace many steps of the transition. The number of practising lawyers who sat in Parliament, of which there are several complaints, seems to afford an inference that it had begun in the reign of Edward III. Besides several petitions of the commons that none but knights or reputable squires should be returned for shires, an ordinance was made in the forty-sixth of his reign that no lawyer practising in the King's Court, nor sheriff during his shrievalty, be returned knight for a county, because these lawyers put forward many petitions in the name of the Commons which only concerned their clients. This, probably, was truly alleged, as we may guess

[19] Brady on Boroughs, p. 182, etc.

from the vast number of proposals for changing the course of legal process which fill the rolls during this reign. It is not to be doubted, however, that many practising lawyers were men of landed estate in their respective counties.

An act in the first year of Henry V. directs that none be chosen knights, citizens, or burgesses who are not resident within the place for which they are returned on the day of the date of the writ. This statute apparently indicates a point of time when the deviation from the line of law was frequent enough to attract notice, and yet not so established as to pass for an unavoidable irregularity. Even at the time when it was enacted, the law had probably, as such, very little effect. But still the plurality of elections were made according to ancient usage, as well as statute, out of the constituent body. The contrary instances were exceptions to the rule, but exceptions increasing continually till they subverted the rule itself. Prynne has remarked that we chiefly find Cornish surnames among the representatives of Cornwall, and those of Northern families among the returns from the North. Nor do the members for shires and towns seem to have been much interchanged — the names of the former belonging to the most ancient families, while those of the latter have a more plebeian caste. In the reign of Edward IV., and not before, a very few of the burgesses bear the addition of esquire in the returns, which became universal in the middle of the succeeding century.

Even county elections seem in general, at least in the fourteenth century, to have been ill attended, and left to the influence of a few powerful and active persons. A petitioner against an undue return, in the 12th of Edward II., complains that, whereas he had been chosen knight for Devon by Sir William Martin, bishop of Exeter, with the consent of the county, yet the sheriff had returned another. In several indentures of a much later date a few persons only seem to have been concerned in the election, though the assent of the community be expressed. These irregularities, which it would be exceedingly erroneous to convert, with Hume, into lawful customs, resulted from the abuses of the sheriff's power, which, when Parliament sat only for a few weeks, with its hands full of business, were almost sure to escape with impunity. They were sometimes, also, countenanced, or rather instigated, by the crown, which, having recovered in Edward II.'s reign the prerogative of naming the sheriffs, surrendered by an act of his father, filled that office with its creatures, and constantly disregarded the statute forbidding their continuance beyond a

year. Without searching for every passage that might illustrate the interference of the crown in elections, I will mention one or two leading instances. When Richard II. was meditating to overturn the famous commission of reform, he sent for some of the sheriffs, and required them to permit no knight or burgess to be elected to the next Parliament without the approbation of the king and his council. The sheriffs replied that the commons would maintain their ancient privilege of electing their own representatives. The Parliament of 1397, which attainted his enemies and left the constitution at his mercy, was chosen, as we are told, by dint of intimidation and influence.

§ 18. The House of Lords, as we left it in the reign of Henry III., was entirely composed of such persons holding lands by barony as were summoned by particular writ of Parliament. Tenure and summons were both essential at this time in order to render any one a lord of Parliament—the first, by the ancient constitution of our feudal monarchy from the Conquest; the second, by some regulation or usage of doubtful origin, which was thoroughly established before the conclusion of Henry III.'s reign. This produced, of course, a very marked difference between the greater and the lesser, or unparliamentary barons. The tenure of the latter, however, still subsisted; and, though too inconsiderable to be members of the legislature, they paid relief as barons, they might be challenged on juries, and, as I presume, by parity of reasoning, were entitled to trial by their peerage. These lower barons, or more commonly tenants by parcels of baronies,[20] may be dimly traced to the latter years of Edward III. But many of them were successively summoned to Parliament, and thus recovered the former lustre of their rank, while the rest fell gradually into the station of commoners, as tenants by simple knight-service.

As tenure without summons did not entitle any one to the privileges of a Lord of Parliament, so no spiritual person at least ought to have been summoned without baronial tenure. Great irregularities prevailed in the rolls of Chancery, from which the writs to spiritual and temporal peers were taken —arising in part, perhaps, from negligence, in part from willful perversion; so that many abbots and priors, who had no baronial tenure, were summoned at times and subsequently

[20] Baronies were often divided by descent among females into many parts, each retaining its character as a fractional member of a barony. The tenants in such case were said to hold of the king by the third, fourth, or twentieth part of a barony, and did service or paid relief in such proportion.

omitted, of whose actual exemption we have no record. Out of 122 abbots and 41 priors who at some time or other sat in Parliament, but twenty-five of the former and two of the latter were constantly summoned; the names of forty occur only once, and those of thirty-six others not more than five times. Their want of baronial tenure, in all probability, prevented the repetition of writs which accident or occasion had caused to issue.[21]

The ancient temporal peers are supposed to have been intermingled with persons who held nothing of the crown by barony, but attended in Parliament solely by virtue of the king's prerogative exercised in the writ of summons. These have been called *Barons by Writ;* and it seems to be denied by no one that, at least under the first three Edwards, there were some of this description in Parliament. But, after all the labors of Dugdale and others in tracing the genealogies of our ancient aristocracy, it is a problem of much difficulty to distinguish these from the territorial barons. As the latter honors descended to female heirs, they passed into new families and new names, so that we can hardly decide of one summoned for the first time to Parliament that he did not inherit the possession of a feudal barony. Husbands of baronial heiresses were frequently summoned in their wives' right, but by their own names. They even sat after the death of their wives, as tenants by the courtesy. If we judge, however, by the lists of those summoned, according to the best means in our power, it will appear that the regular barons by tenure were all along very far more numerous than those called by writ; and that from the end of Edward III.'s reign no spiritual persons, and few if any laymen, except peers created by patent, were summoned to Parliament who did not hold territorial baronies.

With respect to those who were indebted for their seats among the Lords to the king's writ, there are two material questions—whether they acquired an hereditary nobility by virtue of the writ; and, if this be determined against them, whether they had a decisive or merely a deliberative voice in the house. Now, for the first question, it seems that, if the writ of summons conferred an estate of inheritance, it

[21] It is worthy of observation that the spiritual peers summoned to Parliament were in general considerably more numerous than the temporal. This appears, among other causes, to have saved the Church from that sweeping reformation of its wealth, and perhaps of its doctrines, which the Commons were thoroughly inclined to make under Richard II. and Henry IV. Thus the reduction of the spiritual lords by the dissolution of monasteries was indispensably required to bring the ecclesiastical order into due subjection to the state.

must have done so either by virtue of its terms or by established construction and precedent. But the writ contains no words by which such an estate can in law be limited; it summons the person addressed to attend in Parliament in order to give his advice on the public business, but by no means implies that his advice will be required of his heirs, or even of himself, on any other occasion. We find that no less than ninety-eight laymen were summoned once only to Parliament, none of their names occurring afterwards; and fifty others two, three, or four times. Some were constantly summoned during their lives, none of whose posterity ever attained that honor. The course of proceeding, therefore, previous to the accession of Henry VII., by no means warrants the doctrine which was held in the latter end of Elizabeth's reign, and has since been too fully established by repeated precedents to be shaken by any reasoning. The foregoing observations relate to the more ancient history of our constitution, and to the plain matter-of-fact as to those times, without considering what political cause there might be to prevent the crown from introducing occasional counsellors into the House of Lords.

It is manifest by many passages in these records that bannerets were frequently summoned to the upper house of Parliament, constituting a distinct class inferior to barons, though generally named together, and ultimately confounded with them. Barons are distinguished by the appellation of Sire; bannerets have only that of Monsieur, as le Sire de Berkeley, le Sire de Fitzwalter, Monsieur Richard Scrop, Monsieur Richard Stafford. The distinction, however, between barons and bannerets died away by degrees. In the second of Henry VI., Scrop of Bolton is called le Sire de Scrop—a proof that he was then reckoned among the barons. The bannerets do not often appear afterwards by that appellation as members of the upper house. Bannerets, or, as they are called, banrents, are enumerated among the orders of Scottish nobility in the year 1428, when the statute directing the common lairds or tenants in capite to send representatives was enacted; and a modern historian justly calls them an intermediate order between the peers and lairds. Perhaps a consideration of these facts, which have frequently been overlooked, may tend in some measure to explain the occasional discontinuance, or sometimes the entire cessation, of writs of summons to an individual or his descendants; since we may conceive that bannerets, being of a dignity much inferior to that of barons, had no such inheritable nobility in their blood as

rendered their Parliamentary privileges a matter of right. But whether all those who without any baronial tenure received their writs of summons to Parliament belonged to the order of bannerets, I can not pretend to affirm; though some passages in the rolls might rather lead to such a supposition.

The second question relates to the right of suffrage possessed by these temporary members of the upper house. It might seem plausible, certainly, to conceive that the real and ancient aristocracy would not permit their powers to be impaired by numbering the votes of such as the king might please to send among them, however they might allow them to assist in their debates. But I am much more inclined to suppose that they were in all respects on an equality with other peers during their actual attendance in Parliament. For, 1. They are summoned by the same writ as the rest, and their names are confused among them in the lists; whereas the judges and ordinary counsellors are called by a separate writ, vobiscum et cæteris de consilio nostro, and their names are entered after those of the peers. 2. Some, who do not appear to have held land baronies, were constantly summoned from father to son, and thus became hereditary lords of Parliament through a sort of prescriptive right, which probably was the foundation of extending the same privilege afterwards to the descendants of all who had once been summoned. There is no evidence that the family of Scrope, for example, which was eminent under Edward III. and subsequent kings, and gave rise to two branches, the lords of Bolton and Masham, inherited any territorial honor. 3. It is very difficult to obtain any direct proof as to the right of voting, because the rolls of Parliament do not take notice of any debates; but there happens to exist one remarkable passage in which the suffrages of the Lords are individually specified.[22]

[22] In the first Parliament of Henry IV. the Lords were requested by the Earl of Northumberland to declare what should be done with the late King Richard. The lords then present agreed that he should be detained in safe custody; and on account of the importance of this matter it seems to have been thought necessary to enter their names upon the roll in these words: The names of the lords concurring in their answer to the said question here follow; to wit, the Archbishop of Canterbury and fourteen other bishops; seven abbots; the Prince of Wales, the Duke of York, and six earls; nineteen barons, styled thus—le Sire de Roos, or le Sire de Grey de Ruthyn. Thus far the entry has nothing singular; but then follow these nine names: Monsieur Henry Percy, Monsieur Richard Scrop, le Sire Fitz-hugh, le Sire de Bergeveny, le Sire de Lomley, le Baron de Greystock, le Baron de Hilton, Monsieur Thomas Erpyngham, chamberlayn, Monsieur Mayhew Gournay. Of these nine five were undoubtedly barons, from whatever cause misplaced in order. Scrop was summoned by writ; but his title of Monsieur, by which he is invariably denominated, would of itself create a strong suspicion that he was no baron, and in another place we find him reckoned among the bannerets. The other three do not appear to have been

§ 19. The next method of conferring an honor of peerage was by creation in Parliament. This was adopted by Edward III. in several instances, though always, I believe, for the higher titles of duke or earl. It is laid down by lawyers that whatever the king is said in an ancient record to have done in full Parliament must be taken to have proceeded from the whole legislature. As a question of fact, indeed, it might be doubted whether, in many proceedings where this expression is used, and especially in the creation of peers, the assent of the Commons was specifically and deliberately given. It seems hardly consonant to the circumstances of their order under Edward III. to suppose their sanction necessary in what seemed so little to concern their interest. Yet there is an instance in the fortieth year of that prince where the Lords individually, and the Commons with one voice, are declared to have consented, at the king's request, that the Lord de Coucy, who had married his daughter, and was already possessed of estates in England, might be raised to the dignity of an earl, whenever the king should determine what earldom he would confer upon him. Under Richard II. the marquisate of Dublin is granted to Vere by full consent of all the estates. But this instrument, besides the unusual name of dignity, contained an extensive jurisdiction and authority over Ireland. In the same reign Lancaster was made Duke of Guienne, and the Duke of York's son created Earl of Rutland, to hold during his father's life. The consent of the Lords and Commons is expressed in their patents, and they are entered upon the roll of Parliament. Henry V. created his brothers dukes of Bedford and Gloucester, by request of the Lords and Commons. But the patent of Sir John Cornwall, in the tenth of Henry VI., declares him to be made Lord Fanhope "by consent of the Lords, in the presence of the three estates of Parliament;" as if it were designed to show that the Commons had not a legislative voice in the creation of peers.

§ 20. The mention I have made of creating peers by act of Parliament has partly anticipated the modern form of letters patent, with which the other was nearly allied. The first instance of a barony conferred by patent was in the tenth

summoned, their writs probably being lost. One of them, Sir Thomas Erpyngham, a statesman well known in the history of those times, is said to have been a banneret; certainly he was not a baron. It is not unlikely that the two others, Henry Percy (Hotspur) and Gournay, an officer of the household, were also bannerets; they can not, at least, be supposed to be barons, neither were they ever summoned to any subsequent Parliament. Yet in the only record we possess of votes actually given in the House of Lords they appear to have been reckoned among the rest.

year of Richard II., when Sir John Holt, a judge of the Common Pleas, was created Lord Beauchamp, of Kidderminster. Holt's patent, however, passed while Richard was endeavoring to act in an arbitrary manner; and in fact he never sat in Parliament, having been attainted in that of the next year by the name of Sir John Holt. In a number of subsequent patents, down to the reign of Henry VII., the assent of Parliament is expressed, though it frequently happens that no mention of it occurs in the Parliamentary roll. And in some instances the roll speaks to the consent of Parliament where the patent itself is silent.

§ 21. It is now, perhaps, scarcely known by many persons not unversed in the constitution of their country that, besides the bishops and baronial abbots, the inferior clergy were regularly summoned at every Parliament. In the writ of summons to a bishop he is still directed to cause the dean of his cathedral church, the archdeacon of his diocese, with one proctor from the chapter of the former, and two from the body of his clergy, to attend with him at the place of meeting. This might by an inobservant reader be confounded with the summons to the convocation, which is composed of the same constituent parts, and by modern usage is made to assemble on the same day. But it may easily be distinguished by this difference—that the convocation is provincial, and summoned by the metropolitans of Canterbury and York; whereas the clause commonly denominated *præmunientes* (from its first word) in the writ to each bishop proceeds from the crown, and enjoins the attendance of the clergy at the national council of Parliament.

The first unequivocal instance of representatives appearing for the lower clergy is in the year 1255, when they are expressly named by the author of the Annals of Burton. They preceded, therefore, by a few years the House of Commons; but the introduction of each was founded upon the same principle. The king required the clergy's money, but dared not take it without their consent. In the double Parliament, if so we may call it, summoned in the 11th of Edward I., to meet at Northampton and York, and divided according to the two ecclesiastical provinces, the proctors of chapters for each province, but not those of the diocesan clergy, were summoned through a royal writ addressed to the archbishops. Upon account of the absence of any deputies from the lower clergy, these assemblies refused to grant a subsidy. The proctors of both descriptions appear to have been summoned by the præmunientes clause in the 22d, 23d,

24th, 28th, and 35th years of the same king; but in some other Parliaments of his reign the præmunientes clause is omitted. The same irregularity continued under his successor; and the constant usage of inserting this clause in the bishop's writ is dated from the 28th of Edward III.

It is highly probable that Edward I., whose legislative mind was engaged in modelling the constitution on a comprehensive scheme, designed to make the clergy an effective branch of Parliament, however their continual resistance may have defeated the accomplishment of this intention. We find an entry upon the roll of his Parliament at Carlisle, containing a list of all the proctors deputed to it by the several dioceses of the kingdom. This may be reckoned a clear proof of their Parliamentary attendance during his reign under the præmunientes clause; since the province of Canterbury could not have been present in convocation at a city beyond its limits. And, indeed, if we were to found our judgment merely on the language used in these writs, it would be hard to resist a very strange paradox, that the clergy were not only one of the three estates of the realm, but as essential a member of the legislature by their representatives as the Commons.[23] They are summoned in the earliest year extant (23 Edward I.) "ad tractandum, ordinandum et faciendum nobiscum, et cum cæteris prælatis, proceribus, ac aliis incolis regni nostri;" in that of the next year, "ad ordinandum de quantitate et modo subsidii;" in that of the twenty-eighth, "ad faciendum et consentiendum his, quæ tunc de communi consilio ordinari contigerit." In later times it ran sometimes "ad faciendum et consentiendum," sometimes only ad consentiendum; which, from the fifth of Richard II., has been the term invariably adopted. Now, as it is usual to infer from the same words, when introduced into the writs for election of the Commons, that they possessed an enacting power, implied in the words ad faciendum, or at least to deduce the necessity of their assent from the words ad consentiendum, it should seem to follow that the clergy were invested, as a branch of the Parliament, with rights no less extensive. It

[23] The lower house of convocation in 1547, terrified at the progress of reformation, petitioned that, "according to the tenor of the king's writ, and the ancient customs of the realm, they might have room and place and be associated with the Commons in the nether house of this present Parliament, as members of the commonwealth and the king's most humble subjects."—Burnet's Hist. of Reformation, vol. ii.; Appendix, No. 17. This assertion that the clergy had ever been associated as one body with the Commons is not borne out by any thing that appears on our records, and is contradicted by many passages. But it is said that the clergy were actually so united with the Commons in the Irish Parliament till the Reformation.—Gilbert's Hist. of the Exchequer, p. 57.

is to be considered how we can reconcile these apparent attributes of political power with the unquestionable facts that almost all laws, even while they continued to attend, were passed without their concurrence, and that, after some time, they ceased altogether to comply with the writ.[24]

The solution of this difficulty can only be found in that estrangement from the common law and the temporal courts which the clergy throughout Europe were disposed to effect. In this country their ambition defeated its own ends; and while they endeavored by privileges and immunities to separate themselves from the people, they did not perceive that the line of demarkation thus strongly traced would cut them off from the sympathy of common interests. Every thing which they could call of ecclesiastical cognizance was drawn into their own courts; while the administration of what they contemned as a barbarous system, the temporal law of the land, fell into the hands of lay judges. But these were men not less subtle, not less ambitious, not less attached to their profession than themselves; and wielding, as they did in the courts of Westminster, the delegated sceptre of judicial sovereignty, they soon began to control the spiritual jurisdiction, and to establish the inherent supremacy of the common law. From this time an inveterate animosity subsisted between the two courts, the vestiges of which have only been effaced by the liberal wisdom of modern ages. The general love of the common law, however, with the great weight of its professors in the king's council and in Parliament, kept the clergy in surprising subjection. None of our kings after Henry III. were bigots; and the constant tone of the Commons serves to show that the English nation was thoroughly averse to ecclesiastical influence, whether of their own Church or the See of Rome.

It was natural, therefore, to withstand the interference of the clergy summoned to Parliament in legislation, as much as that of the spiritual court in temporal jurisdiction. With the ordinary subjects, indeed, of legislation they had little concern. The oppressions of the king's purveyors, or escheators, or officers of the forests, the abuses or defects of the common laws, the regulations necessary for trading-towns and sea-ports, were matters that touched them not, and to which their consent was never required. And, as they well

[24] The præmunientes clause in a bishop's writ of summons was so far regarded down to the Reformation, that proctors were elected, and their names returned upon the writ; though the clergy never attended from the beginning of the fifteenth century, and gave their money only in convocation. Since the Reformation the clause has been preserved for form merely in the writ.

knew there was no design in summoning their attendance but to obtain money, it was with great reluctance that they obeyed the royal writ, which was generally obliged to be enforced by an archiepiscopal mandate. Thus, instead of an assembly of deputies from an estate of the realm, they became a synod or convocation. And it seems probable that in most, if not all, instances where the clergy are said in the roll of Parliament to have presented their petitions, or are otherwise mentioned as a deliberative body, we should suppose the convocation alone of the province of Canterbury to be intended. For that of York seems to have been always considered as inferior, and even ancillary, to the greater province, voting subsidies, and even assenting to canons, without deliberation, in compliance with the example of Canterbury; the convocation of which province consequently assumed the importance of a national council. But in either point of view the proceedings of this ecclesiastical assembly, collateral in a certain sense to Parliament, yet very intimately connected with it, whether sitting by virtue of the præmunientes clause or otherwise, deserve some notice in a constitutional history.

In the sixth year of Edward III. the proctors of the clergy are specially mentioned as present at the speech pronounced by the king's commissioner, and retired, along with the prelates, to consult together upon the business submitted to their deliberation. They proposed, accordingly, a sentence of excommunication against disturbers of the peace, which was assented to by the Lords and Commons. The clergy are said afterwards to have had leave, as well as the knights, citizens, and burgesses, to return to their homes, the prelates and peers continuing with the king. This appearance of the clergy in full Parliament is not, perhaps, so decisively proved by any later record. But in the eighteenth of the same reign several petitions of the clergy are granted by the king and his council, entered on the roll of Parliament, and even the statute roll, and in some respects are still part of our law. To these it seems highly probable that the Commons gave no assent; and they may be reckoned among the other infringements of their legislative rights. It is remarkable that in the same Parliament the Commons, as if apprehensive of what was in preparation, besought the king that no petition of the clergy might be granted till he and his council should have considered whether it would turn to the prejudice of the Lords or Commons.

In the first session of Richard II. the prelates and clergy

of both provinces are said to have presented their schedule of petitions which appear upon the roll, and three of which are the foundation of statutes unassented to in all probability by the Commons. If the clergy of both provinces were actually present, as is here asserted, it must of course have been as a House of Parliament, and not of convocation. It rather seems, so far as we can trust to the phraseology of records, that the clergy sat also in a national assembly under the king's writ in the second year of the same king. Upon other occasions during the same reign, where the representatives of the clergy are alluded to as a deliberative body, sitting at the same time with the Parliament, it is impossible to ascertain its constitution; and, indeed, even from those already cited we can not draw any positive inference. But whether in convocation or in Parliament, they certainly formed a legislative council in ecclesiastical matters by the advice and consent of which alone, without that of the Commons (I can say nothing as to the Lords), Edward III. and even Richard II. enacted laws to bind the laity. There is a still more conspicuous instance of this assumed prerogative in the memorable statute against heresy in the second of Henry IV.; which can hardly be deemed any thing else than an infringement of the rights of Parliament, more clearly established at that time than at the accession of Richard II. Petitions of the Commons relative to spiritual matters, however frequently proposed, in few or no instances obtained the king's assent so as to pass into statutes, unless approved by the convocation. But, on the other hand, scarcely any temporal laws appear to have passed by the concurrence of the clergy. Two instances only, so far as I know, are on record; the Parliament held in the eleventh of Richard II. is annulled by that in the twenty-first of his reign, "with the assent of the lords spiritual and temporal, *and the proctors of the clergy*, and the Commons;" and the statute entailing the crown on the children of Henry IV. is said to be enacted on the petition of the prelates, nobles, clergy, and commons. Both these were stronger exertions of legislative authority than ordinary acts of Parliament, and were very likely to be questioned in succeeding times.

§ 22. The supreme judicature, which had been exercised by the King's Court, was diverted, about the reign of John, into three channels—the tribunals of King's Bench, Common Pleas, and the Exchequer. These became the regular fountains of justice, which soon almost absorbed the provincial jurisdictions of the sheriff and lord of manor. But the orig-

inal institution, having been designed for ends of state, police, and revenue, fully as much as for the determination of private suits, still preserved the most eminent parts of its authority; for the king's ordinary or privy council, which is the usual style from the reign of Edward I., seems to have been no other than the King's Court (curia regis) of older times, being composed of the same persons, and having, in a principal degree, the same subjects of deliberation. It consisted of the chief ministers; as the chancellor, treasurer, lord steward, lord admiral, lord marshal, the keeper of the privy seal, the chamberlain, treasurer, and comptroller of the household, the chancellor of the Exchequer, the master of the wardrobe; and of the judges, king's sergeant, and attorney-general, the master of the rolls, and justices in eyre, who at that time were not the same as the judges at Westminster. When all these were called together, it was a full council; but where the business was of a more contracted nature, those only who were fittest to advise were summoned—the chancellor and judges for matters of law; the officers of state for what concerned the revenue or household."[28]

The business of this council, out of Parliament, may be reduced to two heads — its deliberative office as a council of advice, and its decisive power of jurisdiction. With respect to the first, it obviously comprehended all subjects of political deliberation, which were usually referred to it by the king; this being in fact the administration or governing council of state, the distinction of a cabinet being introduced in comparatively modern times. But there were likewise a vast number of petitions continually presented to the council, upon which they proceeded no farther than to sort, as it were, and forward them by indorsement to the proper courts, or advise the suitor what remedy he had to seek. Thus some petitions are answered, "this can not be done without a new law;" some were turned over to the regular court, as the Chancery or King's Bench; some of greater moment were indorsed to be heard "before the Great Coun-

[28] The words "privy council" are said not to be used till after the reign of Henry VI.; the former style was "ordinary" or "continual council." But a distinction had always been made, according to the nature of the business; the great officers of state, or, as we might now say, the ministers, had no occasion for the presence of judges or any lawyers in the secret councils of the crown. They become, therefore, a council of government, though always members of the *consilium ordinarium*; and, in the former capacity, began to keep formal records of their proceedings. The acts of this council—though, as I have just said, it bore as yet no distinguishing name—are extant from the year 1386, and for seventy years afterwards are known through the valuable publication of Sir Harris Nicolas.

cil;" some, concerning the king's interest, were referred to the Chancery, or select persons of the council.

The coercive authority exercised by this standing council of the king was far more important. It may be divided into acts, legislative and judicial. As for the first, many ordinances were made in council; sometimes upon request of the Commons in Parliament, who felt themselves better qualified to state a grievance than a remedy; sometimes without any pretense, unless the usage of government, in the infancy of our constitution, may be thought to afford one. These were always of a temporary or partial nature, and were considered as regulations not sufficiently important to demand a new statute. But the council frequently so much exceeded what the growing spirit of public liberty would permit, that it gave rise to complaint in Parliament. The Commons petition, in 13 R. II., that "neither the chancellor nor the king's council, after the close of Parliament, may make any ordinance against the common law, or the ancient customs of the land, or the statutes made heretofore or to be made in this Parliament; but that the common law have its course for all the people, and no judgment be rendered without due legal process." The king answers, "Let it be done as has been usual heretofore, saving the prerogative; and if any one is aggrieved, let him show it specially, and right shall be done him." This unsatisfactory answer proves the arbitrary spirit in which Richard was determined to govern.

The judicial power of the council was in some instances founded upon particular acts of Parliament, giving it power to hear and determine certain causes. Many petitions likewise were referred to it from Parliament, especially where they were left unanswered by reason of a dissolution. But, independently of this delegated authority, it is certain that the king's council did anciently exercise, as well out of Parliament as in it, a very great jurisdiction, both in causes criminal and civil. Some, however, have contended that whatever they did in this respect was illegal, and an encroachment upon the common law and Magna Charta. And be the common law what it may, it seems an indisputable violation of the charter in its most admirable and essential article, to drag men in questions of their freehold or liberty before a tribunal which neither granted them a trial by their peers nor always respected the law of the land. Against this usurpation the patriots of those times never ceased to lift their voices. Nothing, however, would prevail on the council to surrender so eminent a power, and, though usurped,

yet of so long a continuance. Cases of arbitrary imprisonment frequently occurred, and were remonstrated against by the Commons. The right of every freeman in that cardinal point was as indubitable, legally speaking, as at this day; but the courts of law were afraid to exercise their remedial functions in defiance of so powerful a tribunal. After the accession of the Lancastrian family, these, like other grievances, became rather less frequent; but the Commons remonstrated several times, even in the minority of Henry VI., against the council's interference in matters cognizable at common law. In these later times the civil jurisdiction of the council was principally exercised in conjunction with the Chancery, and accordingly they are generally named together in the complaint. The chancellor having the great seal in his custody, the council usually borrowed its process from his court. This was returnable into chancery even where the business was depending before the council. Nor were the two jurisdictions less intimately allied in their character, each being of an equitable nature; and equity, as then practised, being little else than innovation and encroachment on the course of law. This part, long since the most important of the chancellor's judicial function, can not be traced beyond the time of Richard II., when, the practice of feoffments to uses having been introduced, without any legal remedy to secure the cestui que use, or usufructuary, against his feoffees, the Court of Chancery undertook to enforce this species of contract by process of its own.

Such was the nature of the king's ordinary council in itself, as the organ of his executive sovereignty, and such the jurisdiction which it habitually exercised. But it is also to be considered in its relation to the Parliament, during whose session, either singly or in conjunction with the Lords' house, it was particularly conspicuous. The great officers of state, whether peers or not, the judges, the king's sergeant, and attorney-general, were, from the earliest times, as the latter still continue to be, summoned by special writs to the upper house. But while the writ of a peer runs "ad tractandum nobiscum et cum cæteris prælatis, magnatibus et proceribus," that directed to one of the judges is only "ad tractandum nobiscum et cum cæteris de consilio nostro;" and the seats of the latter are upon the wool-sacks at one extremity of the house.

In the reigns of Edward I. and II. the council appear to have been the regular advisers of the king in passing laws to which the houses of Parliament had assented. The pre-

ambles of most statutes during this period express their concurrence. Thus the statute Westminster I. is said to be the act of the king by his council, and by the assent of archbishops, bishops, abbots, priors, earls, barons, and all the commonalty of the realm being hither summoned. Still more striking conclusions are to be drawn from the petitions addressed to the council by both houses of Parliament. In the eighth of Edward II. there are four petitions from the Commons to the king and his council, one from the Lords alone, and one in which both appear to have joined. Later Parliaments of the same reign present us with several more instances of the like nature. Thus in 18 Edward II. a petition begins, "To our lord the king, and to his council, the archbishops, bishops, prelates, earls, barons, and others of the commonalty of England, show," etc.

But from the beginning of Edward III.'s reign it seems that the council and the Lords' house in Parliament were often blended together into one assembly. This was denominated the great council, being the lords spiritual and temporal, with the king's ordinary council annexed to them, as a council within a council. And even in much earlier times the Lords, as hereditary councillors, were, either whenever they thought fit to attend, or on special summonses by the king (it is hard to say which), assistant members of this council, both for advice and for jurisdiction. This double capacity of the peerage, as members of the Parliament or legislative assembly and of the deliberative and judicial council, throws a very great obscurity over the subject. However, we find that private petitions for redress were, even under Edward I., presented to the Lords in Parliament as much as to the ordinary council. The Parliament was considered a high court of justice, where relief was to be given in cases where the course of law was obstructed, as well as where it was defective. Hence the intermission of Parliaments was looked upon as a delay of justice, and their annual meeting is demanded upon that ground. "The king," says Flete, "has his court in his council, in his Parliaments, in the presence of bishops, earls, barons, lords, and other wise men, where the doubtful cases of judgments are resolved, and new remedies are provided against new injuries, and justice is rendered to every man according to his desert." In the third year of Edward II. receivers of petitions began to be appointed at the opening of every Parliament, who usually transmitted them to the ordinary, but in some instances to the great council. These receivers were com-

monly three for England, and three for Ireland, Wales, Gascony, and other foreign dominions. There were likewise two corresponding classes of auditors or triers of petitions. These consisted partly of bishops or peers, partly of judges and other members of the council; and they seem to have been instituted in order to disburden the council by giving answers to some petitions. But about the middle of Edward III.'s time they ceased to act juridically in this respect, and confined themselves to transmitting petitions to the Lords of the council.

The great council, according to the definition we have given, consisting of the lords spiritual and temporal, in conjunction with the ordinary council, or, in other words, of all who were severally summoned to Parliament, exercised a considerable jurisdiction, as well civil as criminal. In this jurisdiction it is the opinion of Sir M. Hale that the council, though not peers, had right of suffrage—an opinion very probable, when we recollect that the council by themselves, both in and out of Parliament, possessed in fact a judicial authority little inferior; and that the king's delegated sovereignty in the administration of justice, rather than any intrinsic right of the peerage, is the foundation on which the judicature of the Lords must be supported. But in the time of Edward III. or Richard II. the Lords, by their ascendency, threw the judges and rest of the council into shade, and took the decisive jurisdiction entirely to themselves, making use of their former colleagues but as assistants and advisers, as they still continue to be held in all the judicial proceedings of that house.

Those statutes which restrain the king's ordinary council from disturbing men in their freehold rights, or questioning them for misdemeanors, have an equal application to the Lords' house in Parliament, though we do not frequently meet with complaints of the encroachments made by that assembly. There was, however, one class of cases tacitly excluded from the operation of those acts, in which the coercive jurisdiction of this high tribunal had great convenience—namely, where the ordinary course of justice was so much obstructed by the defending party, through riots, combinations of maintenance, or overawing influence, that no inferior court would find its process obeyed. Those ages, disfigured in their quietest season by rapine and oppression, afforded no small number of cases that called for this interposition of a paramount authority. Another indubitable branch of this jurisdiction was in writs of error; but it may

be observed that their determination was very frequently left to a select committee of peers and councillors. These, too, cease almost entirely with Henry IV., and were scarcely revived till the accession of James I.

§ 23. Although the restraining hand of Parliament was continually growing more effectual, and the notions of legal right acquiring more precision, from the time of Magna Charta to the civil wars under Henry VI., we may justly say that the general tone of administration was not a little arbitrary. The whole fabric of English liberty rose step by step, through much toil and many sacrifices, each generation adding some new security to the work, and trusting that posterity would perfect the labor as well as enjoy the reward.

There is a material distinction to be taken between the exercise of the king's undeniable prerogative, however repugnant to our improved principles of freedom, and the abuse or extension of it to oppressive purposes. For we can not fairly consider as part of our ancient constitution what the Parliament was perpetually remonstrating against, and the statute-book is full of enactments to repress. It would be necessary to shut our eyes with deliberate prejudice against the whole tenor of the most unquestionable authorities, against the petitions of the Commons, the acts of the legislature, the testimony of historians and lawyers, before we could assert that England acquiesced in those abuses and oppressions which it must be confessed she was unable fully to prevent.

The word prerogative is of a peculiar import, and scarcely understood by those who come from the studies of political philosophy. We can not define it by any theory of executive functions. All these may be comprehended in it, but also a great deal more. It is best, perhaps, to be understood by its derivation, and has been said to be that law in case of the king which is law in no case of the subject.[26] Of the higher and more sovereign prerogatives I shall here say nothing; they result from the nature of a monarchy, and have nothing very peculiar in their character. But the smaller rights of the crown show better the original lineaments of our constitution. It is said commonly enough that all prerogatives are given for the subject's good. I must confess that no part of this assertion corresponds with my view of the subject. It neither appears to me that these prerogatives were ever given nor that they necessarily redound to the subject's good. Prerogative, in its old sense,

[26] Blackstone's Comment. from Finch, vol. i., c. 7.

might be defined an advantage obtained by the crown over the subject, in cases where their interests came into competition, by reason of its greater strength. This sprang from the nature of the Norman government, which rather resembled a scramble of wild beasts, where the strongest takes the best share, than a system founded upon principles of common utility. And, modified as the exercise of most prerogatives has been by the more liberal tone which now pervades our course of government, whoever attends to the common practice of courts of justice, and, still more, whoever consults the law-books, will not only be astonished at their extent and multiplicity, but very frequently at their injustice and severity.

1. *Purveyance.*—The real prerogatives that might formerly be exerted were sometimes of so injurious a nature that we can hardly separate them from their abuse: a striking instance is that of purveyance, which will at once illustrate the definition above given of a prerogative, the limits within which it was to be exercised, and its tendency to transgress them. This was a right of purchasing whatever was necessary for the king's household at a fair price, in preference to every competitor, and without the consent of the owner. By the same prerogative, carriages and horses were impressed for the king's journeys, and lodgings provided for his attendants. This was defended on a pretext of necessity, or at least of great convenience to the sovereign, and was both of high antiquity and universal practice throughout Europe. But the royal purveyors had the utmost temptation, and doubtless no small store of precedents, to stretch this power beyond its legal boundary; and not only to fix their own price too low, but to seize what they wanted without any payment at all, or with tallies, which were carried in vain to an empty exchequer. This gave rise to a number of petitions from the Commons, upon which statutes were often framed; but the evil was almost incurable in its nature, and never ceased till that prerogative was itself abolished. Purveyance, as I have already said, may serve to distinguish the defects from the abuses of our constitution. It was a reproach to the law that men should be compelled to send their goods without their consent; it was a reproach to the administration that they were deprived of them without payment.

The right of purchasing men's goods for the use of the king was extended, by a sort of analogy, to their labor. Thus Edward III. announces to all sheriffs that William, of Walsing-

ham, had a commission to collect as many painters as might suffice for "our works in St. Stephen's Chapel, Westminster, to be at our wages as long as shall be necessary," and to arrest and keep in prison all who should refuse or be refractory, and enjoins them to lend their assistance. Windsor Castle owes its massive magnificence to laborers impressed from every part of the kingdom. There is even a commission from Edward IV. to take as many workmen in gold as were wanting, and employ them at the king's cost upon the trappings of himself and his household.

2. *Feudal Rights.*—Another class of abuses, intimately connected with unquestionable though oppressive rights of the crown, originated in the feudal tenure which bound all the lands of the kingdom. The king had indisputably a right to the wardship of his tenants in chivalry, and to the escheats or forfeitures of persons dying without heirs or attainted for treason. But his officers, under pretense of wardship, took possession of lands not held immediately of the crown, claimed escheats where a right heir existed, and seized estates as forfeited which were protected by the statute of entails. The real owner had no remedy against this disposition but to prefer his petition of right in Chancery, or, which was probably more effectual, to procure a remonstrance of the House of Commons in his favor. Even where justice was finally rendered to him, he had no recompense for his damages; and the escheaters were not less likely to repeat an iniquity by which they could not personally suffer.

3. *Forest Laws.*—The charter of the forests, granted by Henry III. along with Magna Charta, had been designed to crush the flagitious system of oppression which prevailed in those favorite haunts of the Norman kings. They had still, however, their peculiar jurisdiction, though from the time at least of Edward III. subject in some measure to the control of the King's Bench. The foresters, I suppose, might find a compensation for their want of the common law in that easy and licentious way of life which they affected; but the neighboring cultivators frequently suffered from the king's officers who attempted to recover those adjacent lands, or, as they were called, purlieus, which had been disafforested by the charter, and protected by frequent perambulations. Many petitions of the Commons relate to this grievance.

4. *Jurisdiction of Constable and Marshal.*—The constable and marshal of England possessed a jurisdiction, the proper limits whereof were sufficiently narrow, as it seems, to have extended only to appeals of treason committed beyond sea,

which were determined by combat, and to military offenses within the realm. But these high officers frequently took upon them to inquire of treasons and felonies cognizable at common law, and even of civil contracts and trespasses. This is no bad illustration of the state in which our constitution stood under the Plantagenets. No color of right or of supreme prerogative was set up to justify a procedure so manifestly repugnant to the great charter. For all remonstrances against these encroachments the king gave promises in return; and a statute was enacted, in the thirteenth of Richard II., declaring the bounds of the constable and marshal's jurisdiction. It could not be denied, therefore, that all infringements of these acknowledged limits were illegal, even if they had a hundred-fold more actual precedents in their favor than can be supposed. But the abuse by no means ceased after the passing of this statute, as several subsequent petitions that it might be better regarded will evince.

§ 24. If I have faithfully represented thus far the history of our constitution, its essential character will appear to be a monarchy greatly limited by law, though retaining much power that was ill calculated to promote the public good, and swerving continually into an irregular course, which there was no restraint adequate to correct. But of all the notions that have been advanced as to the theory of this constitution, the least consonant to law and history is that which represents the king as merely an hereditary executive magistrate, the first officer of the state. What advantages might result from such a form of government this is not the place to discuss. But it certainly was not the ancient constitution of England. There was nothing in this, absolutely nothing, of a republican appearance. All seemed to grow out of the monarchy, and was referred to its advantage and honor. The voice of supplication, even in the stoutest disposition of the Commons, was always humble; the prerogative was always named in large and pompous expressions. Still more naturally may we expect to find in the law-books even an obsequious deference to power, from judges who scarcely ventured to consider it as their duty to defend the subject's freedom, and who beheld the gigantic image of prerogative, in the full play of its hundred arms, constantly before their eyes. Through this monarchical tone, which certainly pervades all our legal authorities, a writer like Hume, accustomed to philosophical liberality as to the principles of government, and to the democratical language which the modern aspect of the constitution and the liberty of printing have produced,

fell hastily into the error of believing that all limitations of royal power during the fourteenth and fifteenth centuries were as much unsettled in law and in public opinion as they were liable to be violated by force. Though a contrary position has been sufficiently demonstrated, I conceive, by the series of Parliamentary proceedings which I have already produced, yet there is a passage in Sir John Fortescue's treatise "De Laudibus Legum Angliæ," so explicit and weighty, that no writer on the English constitution can be excused from inserting it. This eminent person, having been chief justice of the King's Bench under Henry VI., was governor to the young Prince of Wales during his retreat in France, and received at his hands the office of chancellor. It must never be forgotten that, in a treatise purposely composed for the instruction of one who hoped to reign over England, the limitations of government are enforced as strenuously by Fortescue as some succeeding lawyers have inculcated the doctrines of arbitrary prerogative.

"A king of England can not at his pleasure make any alterations in the laws of the land, for the nature of his government is not only regal, but political. Had it been merely regal, he would have a power to make what innovations and alterations he pleased in the laws of the kingdom, impose tallages and other hardships upon the people whether they would or no, without their consent, which sort of government the civil laws point out when they declare 'Quod principi placuit, legis habet vigorem.' But it is much otherwise with a king whose government is political, because he can neither make any alteration or change in the laws of the realm without the consent of the subjects, nor burden them against their wills with strange impositions; so that a people governed by such laws as are made by their own consent and approbation enjoy their properties securely and without the hazard of being deprived of them, either by the king or any other. The same things may be effected under an absolute prince, provided he do not degenerate into the tyrant. Of such a prince, Aristotle, in the third of his 'Politics,' says, 'It is better for a city to be governed by a good man than by good laws.' But because it does not always happen that the person presiding over a people is so qualified, St. Thomas, in the book which he writ to the King of Cyprus, 'De Regimine Principum,' wishes that a kingdom could be so instituted as that the king might not be at liberty to tyrannize over his people; which only comes to pass in the present case: that is, when the sovereign power is restrained by political laws. Rejoice, therefore, my good prince, that such is the law of the kingdom which you are to inherit, because it will afford, both to yourself and subjects, the greatest security and satisfaction."[27]

The two great divisions of civil rule, the absolute, or regal as he calls it, and the political, Fortescue proceeds to deduce from the several originals of conquest and compact. Concerning the latter he declares emphatically a truth not always palatable to princes, that such governments were insti-

[27] Fortescue, "De Laudibus Legum Angliæ," c. 9.

tuted by the people and for the people's good; quoting St. Augustin for a similar definition of a political society:

"As the head of a body natural can not change its nerves and sinews, can not deny to the several parts their proper energy, their due proportion and aliment of blood; neither can a king, who is the head of a body politic, change the laws thereof, nor take from the people what is theirs by right against their consent. Thus you have, sir, the formal institution of every political kingdom, from whence you may guess at the power which a king may exercise with respect to the laws and the subject. For he is appointed to protect his subjects in their lives, properties, and laws; for this very end and purpose he has the delegation of power from the people, and he has no just claim to any other power but this. Wherefore, to give a brief answer to that question of yours, concerning the different powers which kings claim over their subjects, I am firmly of opinion that it arises solely from the different natures of their original institution, as you may easily collect from what has been said. So the kingdom of England had its original from Brute, and the Trojans who attended him from Italy and Greece, and became a mixed kind of government, compounded of the regal and political.[28]

It would occupy too much space to quote every other passage of the same nature in this treatise of Fortescue, and in that entitled, "Of the Difference between an Absolute and Limited Monarchy," which, so far as these points are concerned, is nearly a translation from the former.[29] But these, corroborated as they are by the statute-book and by the rolls of Parliament, are surely conclusive against the notions which pervade Mr. Hume's history. I have already remarked that a sense of the glaring prejudice by which some Whig writers had been actuated, in representing the English constitution from the earliest times as nearly arrived at its present perfection, conspired with certain prepossessions of his own to lead this eminent historian into an equally erroneous system on the opposite side. And as he traced the stream backward, and came last to the times of the Plantagenet dynasty, with opinions already biased and even pledged to the world in his volumes of earlier publication, he was prone to seize hold of, and even exaggerate, every circumstance that indicated immature civilization, and law perverted or infringed. To this his ignorance of English jurisprudence, which certainly in some measure disqualified him from writing our history, did not a little contribute; misrepresentations frequently occurring in his work which a moderate acquaintance with the law of the land would have prevented.

[28] Fortescue, "De Laudibus Legum Angliæ," c. 13.

[29] The latter treatise having been written under Edward IV.—whom Fortescue, as a restored Lancastrian, would be anxious not to offend, and whom, in fact, he took some pains to conciliate both in this and other writings—it is evident that the principles of limited monarchy were as fully recognized in his reign, whatever particular acts of violence might occur, as they had been under the Lancastrian princes.

It is an honorable circumstance to England that the history of no other country presents so few instances of illegal condemnations upon political charges. The judicial torture was hardly known, and never recognized by law. The sentence in capital crimes, fixed unalterably by custom, allowed nothing to vindictiveness and indignation. There hardly occurs an example of any one being notoriously put to death without form of trial, except in moments of flagrant civil war. If the rights of juries were sometimes evaded by irregular jurisdictions, they were at least held sacred by the courts of law; and through all the vicissitudes of civil liberty, no one ever questioned the primary right of every freeman, handed down from his Saxon forefathers, to the trial by his peers. A just regard for public safety prescribes the necessity of severe penalties against rebellion and conspiracy; but the interpretation of these offenses, when intrusted to sovereigns and their counsellors, has been the most tremendous instrument of despotic power. In rude ages, even though a general spirit of political liberty may prevail, the legal character of treason will commonly be undefined; nor is it the disposition of lawyers to give greater accuracy to this part of criminal jurisprudence. The nature of treason appears to have been subject to much uncertainty in England before the statute of Edward III. If that memorable law did not give all possible precision to the offense, which we must certainly allow, it prevented at least those stretches of vindictive tyranny which disgrace the annals of other countries. The praise, however, must be understood as comparative. Some cases of harsh if not illegal convictions could hardly fail to occur in times of violence, and during changes of the reigning family. Perhaps the circumstances have now and then been aggravated by historians. Nothing could be more illegal than the conviction of the Earl of Cambridge and Lord Scrope in 1415, if it be true, according to Carte and Hume, that they were not heard in their defense. But whether this is to be absolutely inferred from the record is perhaps open to question. There seems at least to have been no sufficient motive for such an irregularity, their participation in a treasonable conspiracy being manifest from their own confession. The proceedings against Sir John Mortimer in the 2d of Henry VI. are called by Hume highly irregular and illegal. They were, however, by act of attainder, which can not well be styled illegal. Nor are they to be considered as severe. Mortimer had broken out of the Tower, where he was confined on a charge of treason. This was

a capital felony at common law; and the chief irregularity seems to have consisted in having recourse to Parliament in order to attaint him of treason, when he had already forfeited his life by another crime.

§ 25. By what means the English acquired and preserved this political liberty, which, even in the fifteenth century, was the admiration of judicious foreigners,[20] is a very rational and interesting inquiry. Their own serious and steady attachment to the laws must always be reckoned among the principal causes of this blessing. The civil equality of all freemen below the rank of peerage, and the subjection of peers themselves to the impartial arm of justice and to a due share in contribution to public burdens—advantages unknown to other countries—tended to identify the interests and to assimilate the feelings of the aristocracy with those of the people; classes whose dissension and jealousy have been in many instances the surest hope of sovereigns aiming at arbitrary power. This freedom from the oppressive superiority of a privileged order was peculiar to England. In many kingdoms the royal prerogative was at least equally limited. The statutes of Aragon are more full of remedial provisions. The right of opposing a tyrannical government by arms was more frequently asserted in Castile. But nowhere else did the people possess by law, and I think upon the whole, in effect, so much security for their personal freedom and property. Accordingly, the middling ranks flourished remarkably, not only in commercial towns, but among the cultivators of the soil. "There is scarce a small village," says Sir J. Fortescue, "in which you may not find a knight, an esquire, or some substantial householder (paterfamilias), commonly called a frankleyn,[21] possessed of considerable estate; besides others who are called freeholders, and many yeomen of estates sufficient to make a substantial jury." I would, however, point out more particularly two causes which had a very leading efficacy in the gradual development of our constitution: first, the schemes of Continental ambition in which our govern-

[20] Philip de Comines takes several opportunities of testifying his esteem for the English government. See particularly l. iv., c. i., and l. v., c. xix.

[21] By a frankleyn in this place we are to understand what we call a country squire, like the frankleyn of Chaucer; for the word esquire in Fortescue's time was only used in its limited sense, for the sons of peers and knights, or such as had obtained the title by creation or some other legal means.

The mention of Chaucer leads me to add that the prologue to his "Canterbury Tales" is of itself a continual testimony to the plenteous and comfortable situation of the middle ranks in England, as well as to that fearless independence and frequent originality of character among them which liberty and competence have conspired to produce.

ment was long engaged; secondly, the manner in which feudal principles of insubordination and resistance were modified by the prerogatives of the early Norman kings.

1. At the epoch when William the Conqueror ascended the throne, hardly any other power was possessed by the King of France than what he inherited from the great fiefs of the Capetian family. War with such a potentate was not exceedingly to be dreaded, and William, besides his immense revenue, could employ the feudal services of his vassals, which were extended by him to continental expeditions. These circumstances were not essentially changed till after the loss of Normandy; for the acquisitions of Henry II. kept him fully on an equality with the French crown, and the dilapidation which had taken place in the royal demesnes was compensated by several arbitrary resources that filled the exchequer of these monarchs. But in the reigns of John and Henry III., the position of England, or rather of its sovereign with respect to France, underwent a very disadvantageous change. The loss of Normandy severed the connection between the English nobility and the Continent; they had no longer estates to defend, and took not sufficient interest in the concerns of Guienne to fight for that province at their own cost. Their feudal service was now commuted for an escuage, which fell very short of the expenses incurred in a protracted campaign. Tallages of royal towns and demesne lands, extortion of money from the Jews, every feudal abuse and oppression, were tried in vain to replenish the treasury, which the defense of Eleanor's inheritance against the increased energy of France was constantly exhausting. Even in the most arbitrary reigns a general tax upon land-holders, in any cases but those prescribed by the feudal law, had not been ventured; and the standing bulwark of Magna Charta, as well as the feebleness and unpopularity of Henry III., made it more dangerous to violate an established principle. Subsidies were therefore constantly required; but for these it was necessary for the king to meet Parliament, to hear their complaints, and, if he could not elude, to acquiesce in their petitions. These necessities came still more urgently upon Edward I., whose ambitious spirit could not patiently endure the encroachments of Philip the Fair, a rival not less ambitious, but certainly less distinguished by personal prowess, than himself. What advantage the friends of liberty reaped from this ardor for continental warfare is strongly seen in the circumstances attending the Confirmation of the Charters.

But after this statute had rendered all tallages without consent of Parliament illegal, though it did not for some time prevent their being occasionally imposed, it was still more difficult to carry on a war with France or Scotland, to keep on foot naval armaments, or even to preserve the courtly magnificence which that age of chivalry affected, without perpetual recurrence to the House of Commons. Edward III. very little consulted the interests of his prerogative when he stretched forth his hand to seize the phantom of a crown in France. It compelled him to assemble Parliament almost annually, and often to hold more than one session within the year. Here the representatives of England learned the habit of remonstrance and conditional supply; and though, in the meridian of Edward's age and vigor, they often failed of immediate redress, yet they gradually swelled the statute-roll with provisions to secure their country's freedom; and, acquiring self-confidence by mutual intercourse and sense of the public opinion, they became able, before the end of Edward's reign, and still more in that of his grandson, to control, prevent, and punish the abuses of administration. Of all these proud and sovereign privileges, the right of refusing supply was the key-stone. But for the long wars in which our kings were involved, at first by their possession of Guienne, and afterwards by their pretensions upon the crown of France, it would have been easy to suppress remonstrances by avoiding to assemble Parliament. For it must be confessed that an authority was given to the king's proclamations, and to ordinances of the council, which differed but little from legislative power, and would very soon have been interpreted by complaisant courts of justice to give them the full extent of statutes.

It is common, indeed, to assert that the liberties of England were bought with the blood of our forefathers. This is a very magnanimous boast, and in some degree is consonant enough to the truth. But it is far more generally accurate to say that they were purchased by money. A great proportion of our best laws, including Magna Charta itself, as it now stands confirmed by Henry III., were, in the most literal sense, obtained by a pecuniary bargain with the crown. In many Parliaments of Edward III. and Richard II. this sale of redress is chaffered for as distinctly, and with as little apparent sense of disgrace, as the most legitimate business between two merchants would be transacted. So little was there of voluntary benevolence in what the loyal courtesy of our constitution styles concessions from the throne; and

so little title have these sovereigns, though we can not refuse our admiration to the generous virtues of Edward III. and Henry V., to claim the gratitude of posterity as the benefactors of their people!

2. The relation established between a lord and his vassal by the feudal tenure, far from containing principles of any servile and implicit obedience, permitted the compact to be dissolved in case of its violation by either party. This extended as much to the sovereign as to inferior lords; the authority of the former in France, where the system most flourished, being for several ages rather feudal than political. If a vassal were aggrieved, and if justice were denied him, he sent a defiance, that is, a renunciation of fealty, to the king, and was entitled to enforce redress at the point of his sword. It then became a contest of strength as between two independent potentates, and was terminated by treaty, advantageous or otherwise, according to the fortune of war. This privilege, suited enough to the situation of France, the great peers of which did not originally intend to admit more than a nominal supremacy in the house of Capet, was evidently less compatible with the regular monarchy of England. The stern natures of William the Conqueror and his successors kept in control the mutinous spirit of their nobles, and reaped the profit of feudal tenures without submitting to their reciprocal obligations. They counteracted, if I may so say, the centrifugal force of that system by the application of a stronger power; by preserving order, administering justice, checking the growth of baronial influence and riches, with habitual activity, vigilance, and severity. Still, however, there remained the original principle that allegiance depended conditionally upon good treatment, and that an appeal might be lawfully made to arms against an oppressive government. Nor was this, we may be sure, left for extreme necessity, or thought to require a long-enduring forbearance. In modern times a king compelled by his subjects' swords to abandon any pretension would be supposed to have ceased to reign; and the express recognition of such a right as that of insurrection has been justly deemed inconsistent with the majesty of law. But ruder ages had ruder sentiments. Force was necessary to repel force; and men accustomed to see the king's authority defied by private riot were not much shocked when it was resisted in defense of public freedom.

The Great Charter of John was secured by the election of twenty-five barons as conservators of the compact. If the king, or the justiciary in his absence, should transgress any

article, any four might demand reparation, and on denial carry their complaint to the rest of their body. "And those barons, with all the commons of the land, shall distrain and annoy us by every means in their power; that is, by seizing our castles, lands, and possessions, and every other mode, till the wrong shall be repaired to their satisfaction; saving our person, and our queen and children. And when it shall be repaired they shall obey us as before." It is amusing to see the common law of distress introduced upon this gigantic scale, and the capture of the king's castles treated as analogous to impounding a neighbor's horse for breaking fences.

These feudal notions, which placed the moral obligation of allegiance very low, acting under a weighty pressure from the real strength of the crown, were favorable to constitutional liberty. The great vassals of France and Germany aimed at living independently on their fiefs, with no further concern for the rest than as useful allies having a common interest against the crown. But in England, as there was no prospect of throwing off subjection, the barons endeavored only to lighten its burden, fixing limits to prerogative by law, and securing their observation by parliamentary remonstrances or by dint of arms. Hence, as all rebellions in England were directed only to coerce the government, or at the utmost to change the succession of the crown, without the smallest tendency to separation, they did not impair the national strength nor destroy the character of the constitution. In all these contentions it is remarkable that the people and clergy sided with the nobles against the throne. No individuals are so popular with the monkish annalists, who speak the language of the populace, as Simon, earl of Leicester, Thomas, earl of Lancaster, and Thomas, duke of Gloucester — all turbulent opposers of the royal authority, and probably little deserving of their panegyrics. Very few English historians of the Middle Ages are advocates of prerogative. This may be ascribed both to the equality of our laws and to the interest which the aristocracy found in courting popular favor, when committed against so formidable an adversary as the king.

§ 26. From the time of Edward I. the feudal system and all the feelings connected with it declined very rapidly. But what the nobility lost in the number of their military tenants was in some degree compensated by the state of manners. The higher class of them, who took the chief share in public affairs, were exceedingly opulent; and their mode of life gave wealth an incredibly greater efficacy than it pos-

sesses at present. Gentlemen of large estates and good families who had attached themselves to these great peers, who bore offices which we should call menial in their households, and sent their children thither for education, were of course ready to follow their banner in rising, without much inquiry into the cause. Still less would the vast body of tenants and their retainers, who were fed at the castle in time of peace, refuse to carry their pikes and staves into the field of battle. Many devices were used to preserve this aristocratic influence, which riches and ancestry of themselves rendered so formidable. Such was the maintenance of suits, or confederacies for the purpose of supporting each other's claims in litigation, which was the subject of frequent complaints in Parliament, and gave rise to several prohibitory statutes. By help of such confederacies parties were enabled to make violent entries upon the lands they claimed, which the law itself could hardly be said to discourage. Even proceedings in courts of justice were often liable to intimidation and influence. A practice much allied to confederacies of maintenance, though ostensibly more harmless, was that of giving liveries to all retainers of a noble family; but it had an obvious tendency to preserve that spirit of factious attachments and animosities which it is the general policy of a wise government to dissipate. From the first year of Richard II. we find continual mention of this custom, with many legal provisions against it, but it was never abolished till the reign of Henry VII.

§ 27. These associations under powerful chiefs were only incidentally beneficial as they tended to withstand the abuses of prerogative. In their more usual course they were designed to thwart the legitimate exercise of the king's government in the administration of the laws. All Europe was a scene of intestine anarchy during the Middle Ages; and though England was far less exposed to the scourge of private war than most nations on the Continent, we should find, could we recover the local annals of every country, such an accumulation of petty rapine and tumult as would almost alienate us from the liberty which served to engender it. This was the common tenor of manners, sometimes so much aggravated as to find a place in general history, more often attested by records during the three centuries that the house of Plantagenet sat on the throne. Disseizin, or forcible dispossession of freeholds, makes one of the most considerable articles in our law-books. Highway robbery was from the earliest times a sort of national crime. Capital punishments, though very

frequent, made little impression on a bold and a licentious crew, who had at least the sympathy of those who had nothing to lose on their side, and flattering prospects of impunity. We know how long the outlaws of Sherwood lived in tradition—men who, like some of their betters, have been permitted to redeem by a few acts of generosity the just ignominy of extensive crimes. These, indeed, were the heroes of vulgar applause; but when such a judge as Sir John Fortescue could exult that more Englishmen were hanged for robbery in one year than French in seven, and that, "if an English man be poor, and see another having riches which may be taken from him by might, he will not spare to do so," it may be perceived how thoroughly these sentiments had pervaded the public mind.

Such robbers, I have said, had flattering prospects of impunity. Besides the general want of communication, which made one who had fled from his own neighborhood tolerably secure, they had the advantage of extensive forests to facilitate their depredations and prevent detection. When outlawed or brought to trial, the worst offenders could frequently purchase charters of pardon, which defeated justice in the moment of her blow. Nor were the nobility ashamed to patronize men guilty of every crime. Several proofs of this occur in the rolls.[32]

It is perhaps the most meritorious part of Edward I.'s government that he bent all his power to restrain these breaches of tranquillity. One of his salutary provisions is still in constant use—the statute of coroners. Another, more extensive, and, though partly obsolete, the foundation of modern laws, is the statute of Winton, which enacts that hue and cry shall be made upon the commission of a robbery, and that the hundred shall remain answerable for the damage unless the felons be brought to justice. It may be inferred from this provision that the ancient law of frank-pledge, though re-

[32] A strange policy, for which no rational cause can be alleged, kept Wales and even Cheshire distinct from the rest of the kingdom. Nothing could be more injurious to the adjacent counties. Upon the credit of their immunity from the jurisdiction of the king's courts, the people of Cheshire broke with armed bands into the neighboring counties, and perpetrated all the crimes in their power. As to the Welsh frontier, it was constantly almost in a state of war, which a very little good sense and benevolence in any one of our shepherds would have easily prevented, by admitting the conquered people to partake in equal privileges with their fellow-subjects. Instead of this, they satisfied themselves with aggravating the mischief by granting legal reprisals upon Welshmen. Welshmen were absolutely excluded from bearing offices in Wales. The English living in the English towns of Wales earnestly petition (23 Henry VI., Rot. Parl., vol. v., p. 104, 154) that this exclusion may be kept in force. Complaints of the disorderly state of the Welsh frontier are repeated as late as 12 Edward IV., vol. vi., p. 8.

tained longer in form, had lost its efficiency. By the same act, no stranger or suspicious person was to lodge even in the suburbs of towns; the gates were to be kept locked from sunset to sunrising; every host to be answerable for his guest; the highways to be cleared of trees and underwood for two hundred feet on each side, and every man to keep arms, according to his substance, in readiness to follow the sheriff on hue and cry raised after felons. The last provision indicates that the robbers plundered the country in formidable bands. One of these, in a subsequent part of Edward's reign, burned the town of Boston during a fair, and obtained a vast booty, though their leader had the ill fortune not to escape the gallows.

The preservation of order throughout the country was originally intrusted not only to the sheriff, coroner, and constables, but to certain magistrates called conservators of the peace. These, in conformity to the democratic character of our Saxon government, were elected by the freeholders in their County Court. But Edward I. issued commissions to carry into effect the statute of Winton; and from the beginning of Edward III.'s reign the appointment of conservators was vested in the crown, their authority gradually enlarged by a series of statutes, and their titles changed to that of justices. They were empowered to imprison and punish all rioters and other offenders, and such as they should find by indictment or suspicion to be reputed thieves or vagabonds, and to take sureties for good behavior from persons of evil fame. Such a jurisdiction was hardly more arbitrary than, in a free and civilized age, it has been thought fit to vest in magistrates; but it was ill endured by a people who placed their notions of liberty in personal exemption from restraint rather than any political theory. An act having been passed (2 Richard II., stat. 2, c. 6), in consequence of unusual riots and outrages, enabling magistrates to commit the ringleaders of tumultuary assemblies without waiting for legal process till the next arrival of justices of jail delivery, the Commons petitioned next year against this "horrible grievous ordinance," by which "every freeman in the kingdom would be in bondage to these justices," contrary to the great charter, and to many statutes, which forbid any man to be taken without due course of law. So sensitive was their jealousy of arbitrary imprisonment, that they preferred enduring riot and robbery to chastising them by any means that might afford a precedent to oppression, or weaken men's reverence for Magna Charta.

There are two subjects remaining to which this retrospect of the state of manners naturally leads us, and which I would not pass unnoticed, though not perhaps absolutely essential to a constitutional history; because they tend in a very material degree to illustrate the progress of society, with which civil liberty and regular government are closely connected. These are, first, the servitude or villenage of the peasantry, and their gradual emancipation from that condition; and, secondly, the continual increase of commercial intercourse with foreign countries. But as the latter topic will fall more conveniently into the next part of this work, I shall postpone its consideration for the present.

§ 28. In a former passage I have remarked of the Anglo-Saxon ceorls that neither their situation nor that of their descendants for the earlier reigns after the Conquest appears to have been mere servitude. But from the time of Henry II., as we learn from Glanvil, the villein, so called, was absolutely dependent upon his lord's will, compelled to unlimited services, and destitute of property, not only in the land he held for his maintenance, but in his own acquisitions. If a villein purchased or inherited land, the lord might seize it; if he accumulated stock, its possession was equally precarious. Against his lord he had no right of action; because his indemnity in damages, if he could have recovered any, might have been immediately taken away. If he fled from his lord's service, or from the land which he held, a writ issued de nativitate probandâ, and the master recovered his fugitive by law. His children were born to the same state of servitude; and, contrary to the rule of the civil law, where one parent was free and the other in villenage, the offspring followed their father's condition.

This was certainly a severe lot; yet there are circumstances which materially distinguish it from slavery. The condition of villenage, at least in later times, was perfectly relative; it formed no distinct order in the political economy. No man was a villein in the eye of law unless his master claimed him: to all others he was a freeman, and might acquire, dispose of, or sue for property without impediment.

This class was distinguished into *villeins regardant*, who had been attached from time immemorial to a certain manor, and *villeins in gross*, where such territorial prescription had never existed, or had been broken. In the condition of these, whatever has been said by some writers, I can find no manner of difference: the distinction was merely technical,

and affected only the mode of pleading. The term "in gross" is appropriated in our legal language to property held absolutely and without reference to any other. Thus it is applied to rights of advowson or of common when possessed simply and not as incident to any particular lands. And there can be no doubt that it was used in the same sense for the possession of a villein. But there was a class of persons, sometimes inaccurately confounded with villeins, whom it is more important to separate. Villenage had a double sense, as it related to persons or to lands. As all men were free or villeins, so all lands were held by a free or villein tenure. As a villein might be enfeoffed of freeholds, though they lay at the mercy of his lord, so a freeman might hold tenements in villenage. In this case his personal liberty subsisted along with the burdens of territorial servitude. He was bound to arbitrary service at the will of the lord, and he might by the same will be at any moment dispossessed; for such was the condition of his tenure. But his chattels were secure from seizure, his person from injury, and he might leave the land whenever he pleased.

From so disadvantageous a condition as this of villenage it may cause some surprise that the peasantry of England should have ever emerged. The law incapacitating a villein from acquiring property placed, one would imagine, an insurmountable barrier in the way of his enfranchisement. It followed from thence, and is positively said by Glanvil, that a villein could not buy his freedom, because the price he tendered would already belong to his lord. And even in the case of free tenants in villenage it is not easy to comprehend how their uncertain and unbounded services could ever pass into slight pecuniary commutations; much less how they could come to maintain themselves in their lands, and mock the lord with a nominal tenure according to the custom of the manor.

This, like many others relating to the progress of society, is a very obscure inquiry; but the following observations may tend a little to illustrate our immediate subject, the gradual extinction of villenage.

The services of villenage were gradually rendered less onerous and uncertain. Lords of generous tempers granted indulgences which were either intended to be or readily became perpetual. And thus, in the time of Edward I., we find the tenants in some manors bound only to stated services, as recorded in the lord's book. Some of these, per

haps, might be villeins by blood; but free tenants in villenage were still more likely to obtain this precision in their services; and, from claiming a customary right to be entered in the court-roll upon the same terms as their predecessors, prevailed at length to get copies of it for their security. Proofs of this remarkable transformation from tenants in villenage to copy-holders are found in the reign of Henry III.; and in that of Edward IV. the judges permitted the copy-holder to bring his action of trespass against the lord for dispossession.

While some of the more fortunate villeins crept up into property as well as freedom under the name of copy-holders, the greater part enfranchised themselves in a different manner. The law which treated them so harshly did not take away the means of escape; nor was this a matter of difficulty in such a country as England. To this, indeed, the unequal progression of agriculture and population in different counties would have naturally contributed. Men emigrated, as they always must, in search of cheapness or employment, according to the tide of human necessities. But the villein, who had no additional motive to urge his steps away from his native place, might well hope to be forgotten or undiscovered when he breathed a freer air, and engaged his voluntary labor to a distant master. The lord had indeed an action against him; but there was so little communication between remote parts of the country that it might be deemed his fault, or singular ill-fortune, if he were compelled to defend himself. Even in that case the law inclined to favor him; and so many obstacles were thrown in the way of these suits to reclaim fugitive villeins, that they could not have operated materially to retard their general enfranchisement. In one case, indeed—that of unmolested residence for a year and a day within a walled city or borough—the villein became free, and the lord was absolutely barred of his remedy. This provision is contained even in the laws of William the Conqueror, as contained in Hoveden, and, if it be not an interpolation, may be supposed to have had a view to strengthen the population of those places which were designed for garrisons. This law, whether of William or not, is unequivocally mentioned by Glanvil.

By such means a large proportion of the peasantry before the middle of the fourteenth century had become hired laborers instead of villeins. We first hear of them on a grand scale in an ordinance made by Edward III. in the twenty-third year of his reign. This was just after the dreadful

pestilence of 1348, and it recites that, the number of workmen and servants having been greatly reduced by that calamity, the remainder demanded excessive wages from their employers. Such an enhancement in the price of labor, though founded exactly on the same principles as regulate the value of any other commodity, is too frequently treated as a sort of crime by lawgivers, who seem to grudge the poor that transient melioration of their lot which the progress of population, or other analogous circumstances, will, without any interference, very rapidly take away. This ordinance, therefore, enacts that every man in England of whatever condition, bond or free, of able body, and within sixty years of age, not living of his own, nor by any trade, shall be obliged, when required, to serve any master who is willing to hire him at such wages as were usually paid three years since, or for some time preceding; provided that the laws of villeins or tenants in villenage shall have the preference of their labor, so that they retain no more than shall be necessary for them. More than these old wages is strictly forbidden to be offered, as well as demanded. No one is permitted, under color of charity, to give alms to a beggar. And, to make some compensation to the inferior classes for these severities, a clause is inserted, as wise, just, and practicable as the rest, for the sale of provisions at reasonable prices.

§ 29. This ordinance met with so little regard that a statute was made in Parliament two years after, fixing the wages of all artificers and husbandmen with regard to the nature and season of their labor. From this time it became a frequent complaint of the Commons that the statute of laborers was not kept. The king had in this case, probably, no other reason for leaving their grievance unredressed than his inability to change the order of Providence. A silent alteration had been wrought in the condition and character of the lower classes during the reign of Edward III. This was the effect of increased knowledge and refinement, which had been making a considerable progress for full half a century, though they did not readily permeate the cold region of poverty and ignorance. It was natural that the country people, or uplandish folk, as they were called, should repine at the exclusion from that enjoyment of competence and security for the fruits of their labor which the inhabitants of towns so fully possessed. The fourteenth century was, in many parts of Europe, the age when a sense of political servitude was most keenly felt. Thus the insurrection of

the Jacquerie in France, about the year 1358, had the same character, and resulted in a great measure from the same causes, as that of the English peasants in 1382. And we may account in a similar manner for the democratical tone of the French and Flemish cities, and for the prevalence of a spirit of liberty in Germany and Switzerland."[33]

I do not know whether we should attribute part of this revolutionary concussion to the preaching of Wicliffe's disciples, or look upon both one and the other as phenomena belonging to that particular epoch in the progress of society. New principles, both as to civil rule and religion, broke suddenly upon the uneducated mind, to render it bold, presumptuous, and turbulent. But at least I make little doubt that the dislike of ecclesiastical power, which spread so rapidly among the people at this season, connected itself with a spirit of insubordination and an intolerance of political subjection. Both were nourished by the same teachers, the lower secular clergy; and however distinct we may think a religious reformation from a civil anarchy, there was a good deal common in the language by which the populace were inflamed to either one or the other. Even the scriptural moralities which were then exhibited, and which became the foundation of our theatre, afforded fuel to the spirit of sedition. The common original and common destination of mankind, with every other lesson of equality which religion supplies to humble or to console, were displayed with coarse and glaring features in these representations. The familiarity of such ideas has deadened their effects upon our minds; but when a rude peasant, surprisingly destitute of religious instruction during that corrupt age of the Church, was led at once to these impressive truths, we can not be astonished at the intoxication of mind they produced.

The storm that almost swept away all bulwarks of civilized and regular society seems to have been long in collecting itself. Perhaps a more sagacious legislature might have contrived to disperse it; but the Commons only presented complaints of the refractoriness with which villeins and tenants in villenage rendered their due services; and the exigencies of government led to the fatal poll-tax of a groat, which was the proximate cause of the insurrection. By the demands of these rioters we perceive that territorial servitude was far from extinct; but it should not be hastily concluded that they were all personal villeins, for a large proportion were Kentishmen, to whom that condition could not

[33] NOTE II., "Popular Poetry."

have applied; it being a good bar to a writ de nativitate probandâ that the party's father was born in the county of Kent.

After this tremendous rebellion it might be expected that the legislature would use little indulgence towards the lower commons. Such unhappy tumults are doubly mischievous, not more from the immediate calamities that attend them than from the fear and hatred of the people which they generate in the elevated classes. The general charter of manumission extorted from the king by the rioters of Blackheath was annulled by proclamation to the sheriffs, and this revocation approved by the Lords and Commons in Parliament; who added, as was very true, that such enfranchisement could not be made without their consent; "which they would never give to save themselves from perishing all together in one day." Riots were turned into treason by a law of the same Parliament. By a very harsh statute in the 12th of Richard II. no servant or laborer could depart, even at the expiration of his service, from the hundred in which he lived without permission under the king's seal; nor might any who had been bred to husbandry till twelve years old exercise any other calling. A few years afterwards the Commons petitioned that villeins might not put their children to school in order to advance them by the Church; "and this for the honor of all the freemen of the kingdom." In the same Parliament they complained that villeins fly to cities and boroughs, whence their masters can not recover them, and, if they attempt it, are hindered by the people; and prayed that the Lords might seize their villeins in such places without regard to the franchises thereof. But on both these petitions the king put in a negative.

From henceforward we find little notice taken of villenage in Parliamentary records, and there seems to have been a rapid tendency to its entire abolition.

§ 30. I can not presume to conjecture in what degree voluntary manumission is to be reckoned among the means that contributed to the abolition of villenage. Charters of enfranchisement were very common upon the Continent. They may perhaps have been less so in England. Instances, however, occur from time to time, and we can not expect to discover many. One appears as early as the fifteenth year of Henry III., who grants to all persons born or to be born within his village of Contishall, that they shall be free from all villenage in body and blood, paying an aid of twenty shillings to knight the king's eldest son, and six shillings a

year as a quitrent. So in the twelfth of Edward III. certain of the king's villeins are enfranchised on payment of a fine. In strictness of law, a fine from the villein for the sake of enfranchisement was nugatory, since all he could possess was already at his lord's disposal. But custom and equity might easily introduce different maxims; and it was plainly for the lord's interest to encourage his tenants in the acquisition of money to redeem themselves, rather than to quench the exertions of their industry by availing himself of an extreme right. Deeds of enfranchisement occur in the reigns of Mary and Elizabeth; and perhaps a commission of the latter princess in 1574, directing the enfranchisement of her bondmen and bondwomen on certain manors upon payment of a fine, is the last unequivocal testimony to the existence of villenage; though it is highly probable that it existed in remote parts of the country some time longer.

§ 31. From this general view of the English constitution, as it stood about the time of Henry VI., we must turn our eyes to the political revolutions which clouded the latter years of his reign. The minority of this prince, notwithstanding the vices and dissensions of his court and the inglorious discomfiture of our arms in France, was not perhaps a calamitous period. The country grew more wealthy; the law was, on the whole, better observed; the power of Parliament more complete and effectual than in preceding times. But Henry's weakness of understanding becoming evident as he reached manhood, rendered his reign a perpetual minority. His marriage with a princess of strong mind, but ambitious and vindictive, rather tended to weaken the government and to accelerate his downfall—a certain reverence that had been paid to the gentleness of the king's disposition being overcome by her unpopularity. By degrees Henry's natural feebleness degenerated almost into fatuity; and this unhappy condition seems to have overtaken him nearly about the time when it became an arduous task to withstand the assault in preparation against his government. This may properly introduce a great constitutional subject, to which some peculiar circumstances in the reign of George III. imperiously directed the consideration of Parliament. Though the proceedings of 1788 and 1810 are undoubtedly precedents of far more authority than any that can be derived from our ancient history, yet, as the seal of the legislature has not yet been set upon this controversy, it is not perhaps altogether beyond the possibility of future discussion; and at least it can not be uninteresting to look back on those

parallel or analogous cases by which the deliberations of Parliament upon the question of regency were guided.

§ 32. While the kings of England retained their continental dominions, and were engaged in the wars to which those gave birth, they were of course frequently absent from this country. Upon such occasions the administration seems at first to have devolved officially on the justiciary, as chief servant of the crown. But Henry III. began the practice of appointing lieutenants, or guardians of the realm (custodes regni), as they were more usually termed, by way of temporary substitutes. They were usually nominated by the king without consent of Parliament; and their office carried with it the right of exercising all the prerogatives of the crown. The most remarkable circumstance attending those lieutenancies was that they were sometimes conferred on the heir-apparent during his infancy. The Black Prince, then duke of Cornwall, was left guardian of the realm in 1339, when he was but ten years old; and Richard his son, when still younger, in 1372, during Edward III.'s last expedition into France.

These do not, however, bear a very close analogy to regencies in the stricter sense, or substitutions during the natural incapacity of the sovereign. Of such there had been several instances before it became necessary to supply the deficiency arising from Henry's derangement. 1. At the death of John, William, earl of Pembroke, assumed the title of rector regis et regni, with the consent of the loyal barons who had just proclaimed the young king, and probably conducted the government in a great measure by their advice. But the circumstances were too critical, and the time is too remote, to give this precedent any material weight. 2. Edward I. being in Sicily at his father's death, the nobility met at the Temple Church, as we are informed by a contemporary writer, and, after making a new great seal, appointed the Archbishop of York, Edward, earl of Cornwall, and the earl of Gloucester, to be ministers and guardians of the realm; who accordingly conducted the administration in the king's name until his return.[34] It is here observable that the Earl of Cornwall, though nearest prince of the blood, was not supposed to enjoy any superior title to the regency, wherein he was associated with two other persons. But while the crown itself was hardly acknowledged to be unquestionably hereditary, it would be strange if any notion of such a right to the regency had been entertained. 3. At the accession

[34] Matt. Westmonast. ap. Brady's History of England, vol. ii., p. 1.

of Edward III., then fourteen years old, the Parliament, which was immediately summoned, nominated four bishops, four earls, and six barons as a standing council, at the head of which the Earl of Lancaster seems to have been placed, to advise the king in all business of government. It was an article in the charge of treason, or, as it was then styled, of accroaching royal power, against Mortimer, that he intermeddled in the king's household without the assent of this council. They may be deemed, therefore, a sort of Parliamentary regency, though the duration of their functions does not seem to be defined. 4. The proceedings at the commencement of the next reign are more worthy of attention. Edward III. dying June 21, 1377, the keepers of the great seal next day, in absence of the chancellor beyond sea, gave it into the young king's hands before his council. He immediately delivered it to the Duke of Lancaster, and the duke to Sir Nicholas Bode, for safe custody. Four days afterwards the king in council delivered the seal to the Bishop of St. David's, who affixed it the same day to divers letters patent. Richard was at this time ten years and six months old; an age certainly very unfit for the personal execution of sovereign authority. Yet he was supposed capable of reigning without the aid of a regency. This might be in virtue of a sort of magic ascribed by lawyers to the great seal, the possession of which bars all further inquiry, and renders any government legal. The practice of modern times requiring the constant exercise of the sign-manual has made a public confession of incapacity necessary in many cases where it might have been concealed or overlooked in earlier periods of the constitution. But though no one was invested with the office of regent, a council of twelve was named by the prelates and peers at the king's coronation, July 16, 1377, without whose concurrence no public measure was to be carried into effect. I have mentioned in another place the modifications introduced from time to time by Parliament, which might itself be deemed a great council of regency during the first years of Richard. (See p. 467.) 5. The next instance is at the accession of Henry VI. This prince was but nine months old at his father's death; and whether from a more evident incapacity for the conduct of government in his case than in that of Richard II., or from the progress of constitutional principles in the forty years elapsed since the latter's accession, far more regularity and deliberation were shown in supplying the defect in the executive authority. Upon the news arriving that Henry V.

was dead, several lords spiritual and temporal assembled, on account of the imminent necessity, in order to preserve peace, and provide for the exercise of offices appertaining to the king. These peers accordingly issued commissions to judges, sheriffs, escheators, and others, for various purposes, and writs for a new Parliament. This was opened by commission under the great seal directed to the Duke of Gloucester, in the usual form, and with the king's teste. Some ordinances were made in this Parliament by the Duke of Gloucester as commissioner, and some in the king's name. The acts of the peers who had taken on themselves the administration, and summoned Parliament, were confirmed. On the twenty-seventh day of its session, it is entered upon the roll that the king, "considering his tender age, and inability to direct in person the concerns of his realm, by assent of Lords and Commons, appoints the Duke of Bedford, or, in his absence beyond sea, the Duke of Gloucester, to be protector and defender of the kingdom and English Church, and the king's chief counsellor." Letters patent were made out to this effect, the appointment being, however, expressly during the king's pleasure. Sixteen councillors were named in Parliament to assist the protector in his administration; and their concurrence was made necessary to the removal and appointment of officers, except some inferior patronage specifically reserved to the protector. This arrangement was in contravention of the late king's testament, which had conferred the regency on the Duke of Gloucester, in exclusion of his elder brother. But the nature and spirit of these proceedings will be better understood by a remarkable passage in a roll of a later Parliament; where the House of Lords, in answer to a request of Gloucester that he might know what authority he possessed as protector, remind him that in the first Parliament of the king—

"Ye desired to have had ye governaunce of yis land; affermyng yat hit belonged unto you of rygzt, as well by ye mene of your birth as by ye laste wylle of ye kyng yat was your brover, whome God assoile; alleggyng for you such groundes and motyves as it was yought to your discretion made for your intent; whereupon, the lords spiritual and temporal assembled there in Parliament, among which were there my lordes your uncles, the Bishop of Winchester that now liveth, and the Duke of Exeter, and your cousin the Earl of March that be gone to God, and of Warwick, and other in great number that now live, had great and long deliberation and advice, searched precedents of the governail of the land in time and case semblable, when kings of this land have been tender of age, took also information of the laws of the land, of such persons as be notably learned therein, and finally found your said desire not caused nor grounded in precedent, nor in the law of the land; the which the king that dead is, in his life nor might by his last

will nor otherwise altre, change, nor abroge, without the assent of the three estates, nor commit or grant to any person governance or rule of this land longer than he lived; but on that other behalf, the said lords found your said desire not according with the laws of this land, and against the right and fredome of the estates of the same land. Howe were it that it be not thought that any such thing wittingly proceeded of your intent; and nevertheless to keep peace and tranquillity, and to the intent to ease and appease you, it was advised and appointed by authority of the king, assenting the three estates of this land, that ye, in absence of my lord your brother of Bedford, should be chief of the king's council, and devised unto you a name different from other counsellors, not the name of tutor, lieutenant, governor, nor of regent, nor no name that should import authority of governance of the land, but the name of protector and defensor, which importeth a personal duty of attendance to the actual defense of the land, as well against enemies outward, if case required, as against rebels inward, if any were, that God forbid; granting you therewith certain power, the which is specified and contained in an act of the said Parliament, to endure as long as it liked the king. In the which, if the intent of the said estates had been that ye more power and authority should have had, more should have been expressed therein; to the which appointment, ordinance, and act, ye then agreed you as for your person, making nevertheless protestation that it was not your intent in any wise to deroge or do prejudice unto my lord your brother of Bedford by your said agreement, as toward any right that he would pretend or claim in the governance of this land; and as toward any pre-eminence that you might have or belong unto you as chief of council, it is plainly declared in the said act and articles, subscribed by my said lord of Bedford, by yourself, and the other lords of the council. But as in Parliament to which ye be called upon your faith and ligeance as Duke of Glocester, as other lords be, and not otherwise, we know no power nor authority that ye have, other than ye as Duke of Glocester should have, the king being in Parliament, at years of most discretion: We marvailing with all our hearts that, considering the open declaration of the authority and power belonging to my lord of Bedford and to you in his absence, and also to the king's council subscribed purely and simply by my said lord of Bedford and by you, that you should in any wise be stirred or moved not to content you therewith or to pretend you any other: Namely, considering that the king, blessed be our Lord, is, sith the time of the said power granted unto you, far gone and grown in person, in wit, and understanding, and like with the grace of God to occupy his own royal power within few years: and forasmuch considering the things and causes abovesaid, and other many that long were to write, We lords aforesaid pray, exhort, and require you to content you with the power abovesaid and declared, of the which my lord your brother of Bedford, the king's eldest uncle, contented him: and that ye none larger power desire, will, nor use; giving you this that is aboven written for our answer to your foresaid demand, the which we will dwell and abide with, withouten variance or changing. Over this beseeching and praying you in our most humble and lowly wise, and also requiring you in the king's name, that ye, according to the king's commandment, contained in his writ sent unto you in that behalf, come to this his present Parliament, and intend to the good effect and speed of matters to be demesned and treted in the same, like as of right ye owe to do."—Rot. Parl., 6 Henry VI., vol. iv., p. 326.

It is evident that this plain, or rather rude, address to the Duke of Gloucester was dictated by the prevalence of Cardinal Beaufort's party in council and Parliament. But the

transactions in the former Parliament are not unfairly represented; and, comparing them with the passage extracted above, we may perhaps be entitled to infer: 1. That the king does not possess any constitutional prerogative of appointing a regent during the minority of his successor; and 2. That neither the heir presumptive, nor any other person, is entitled to exercise the royal prerogative during the king's infancy (or, by parity of reasoning, his infirmity), nor to any title that conveys them; the sole right of determining the persons by whom, and fixing the limitations under which, the executive government shall be conducted in the king's name and behalf, devolving upon the great council of Parliament.

In two years the party hostile to Gloucester's influence had gained ground enough to abrogate his office of protector, leaving only the honorary title of chief counsellor. For this the king's coronation, at eight years of age, was thought a fair pretense. The government was conducted as before by a selfish and disunited council; but the king's name was sufficient to legalize their measures, nor does any objection appear to have been made in Parliament to such a mockery of the name of monarchy. In the year 1454, the thirty-second of Henry's reign, his unhappy malady, transmitted perhaps from his maternal grandfather, assumed so decided a character of derangement or imbecility, that Parliament could no longer conceal from itself the necessity of a more efficient ruler. An act was passed accordingly, constituting the Duke of York protector of the Church and kingdom, and chief counsellor of the king, during the latter's pleasure; or until the Prince of Wales should attain years of discretion, on whom the said dignity was immediately to devolve.

It may be conjectured by the provision made in favor of the Prince of Wales, then only two years old, that the king's condition was supposed to be beyond hope of restoration. But in about nine months he recovered sufficient speech and recollection to supersede the Duke of York's protectorate. The succeeding transactions are matter of familiar, though not, perhaps, very perspicuous history. The king was a prisoner in his enemies' hands after the affair at St. Albans, when Parliament met, in July, 1455. In this session little was done except renewing the strongest oaths of allegiance to Henry and his family. But the two houses meeting again after a prorogation to November 12, during which time the Duke of York had strengthened his party, he was reappointed to his charge of protector. It is worthy of notice that in

this transaction the House of Peers assumed an exclusive right of choosing the protector, though, in the act passed to ratify their election, the Commons' assent, as a matter of course, is introduced. The last year's precedent was followed in the present instance, excepting a remarkable deviation; instead of the words "during the king's pleasure," the duke was to hold his office "until he should be discharged of it by the Lords in Parliament."

This extraordinary clause, and the slight allegations on which it was thought fit to substitute a vicegerent for the reigning monarch, are sufficient to prove, even if the common historians were silent, that whatever passed as to this second protectorate of the Duke of York was altogether of a revolutionary complexion. In the actual circumstances of civil blood already spilled, and the king in captivity, we may justly wonder that so much regard was shown to the regular forms and precedents of the constitution. But the duke's natural moderation will account for part of this, and the temper of the Lords for much more. That assembly appears for the most part to have been faithfully attached to the house of Lancaster. The partisans of Richard were found in the Commons and among the populace. Several months elapsed after the victory of St. Albans before an attempt was thus made to set aside a sovereign, not laboring, so far as we know, under any more notorious infirmity than before. It then originated in the Commons, and seems to have received but an unwilling consent from the upper house. Even in constituting the Duke of York protector over the head of Henry, whom all men despaired of ever seeing in a state to face the dangers of such a season, the Lords did not forget the rights of his son. By this latter instrument, as well as by that of the preceding year, the duke's office was to cease upon the Prince of Wales arriving at the age of discretion.

§ 33. But what had long been propagated in secret soon became familiar to the public ear—that the Duke of York laid claim to the throne. He was unquestionably heir general of the royal line, through his mother, Anne, daughter of Roger Mortimer, earl of March, son of Philippa, daughter of Lionel, duke of Clarence, third son of Edward III. Roger Mortimer's eldest son, Edmund, had been declared heir presumptive by Richard II.; but his infancy during the revolution that placed Henry IV. on the throne had caused his pretensions to be passed over in silence. The new king, however, was induced, by a jealousy natural to his situation, to detain the Earl of March in custody. Henry V. restored his

liberty; and, though he had certainly connived for a while at the conspiracy planned by his brother-in-law, the Earl of Cambridge, and Lord Scrope of Masham, to place the crown on his head, that magnanimous prince gave him a free pardon, and never testified any displeasure. The present Duke of York was honored by Henry VI. with the highest trusts in France and Ireland, such as Beaufort and Gloucester could never have dreamed of conferring on him if his title to the crown had not been reckoned obsolete. It has been very pertinently remarked that the crime perpetrated by Margaret and her counsellors in the death of the Duke of Gloucester was the destruction of the house of Lancaster. From this time the Duke of York, next heir in presumption while the king was childless, might innocently contemplate the prospect of royalty; and when such ideas had long been passing through his mind, we may judge how reluctantly the birth of Prince Edward, nine years after Henry's marriage, would be admitted to disturb them. The queen's administration unpopular, careless of national interests, and partial to his inveterate enemy, the Duke of Somerset; the king incapable of exciting fear or respect, himself conscious of powerful alliances and universal favor—all these circumstances combined could hardly fail to nourish those opinions of hereditary right which he must have imbibed from his infancy.

The Duke of York preserved through the critical season of rebellion such moderation and humanity that we may pardon him that bias in favor of his own pretensions to which he became himself a victim. Margaret, perhaps, by her sanguinary violence in the Coventry Parliament of 1460, where the duke and all his adherents were attainted, left him not the choice of remaining a subject with impunity. But with us, who are to weigh these ancient factions in the balance of wisdom and justice, there should be no hesitation in deciding that the house of Lancaster were lawful sovereigns of England. I am, indeed, astonished that not only such historians as Carte, who wrote undisguisedly upon a Jacobite system, but even men of juster principles, have been inadvertent enough to mention the right of the house of York. If the original consent of the nation, if three descents of the crown, if repeated acts of Parliament, if oaths of allegiance from the whole kingdom, and more particularly from those who now advanced a contrary pretension, if undisturbed, unquestioned possession during sixty years, could not secure the reigning family against a mere defect in their genealogy, when were the people to expect tranquillity? No prejudice

has less in its favor, and none has been more fatal to the peace of mankind, than that which regards a nation of subjects as a family's private inheritance. The law of England has been held to annex the subject's fidelity to the reigning monarch, by whatever title he may have ascended the throne, and whoever else may be its claimant.[85] But the statute of the 11th of Henry VII., c. 1, has furnished an unequivocal commentary upon this principle, when, alluding to the condemnations and forfeitures by which those alternate successes of the white and red roses had almost exhausted the noble blood of England, it enacts that "no man for doing true and faithful service to the king for the time being be convict or attaint of high treason, nor of other offenses, by act of Parliament or otherwise."

Though all classes of men and all parts of England were divided into factions by this unhappy contest, yet the strength of the Yorkists lay in London and the neighboring counties, and generally among the middling and lower people. And this is what might naturally be expected. For notions of hereditary right take easy hold of the populace, who feel an honest sympathy for those whom they consider as injured; while men of noble birth and high station have a keener sense of personal duty to their sovereign, and of the baseness of deserting their allegiance. Notwithstanding the wide-spreading influence of the Nevils, most of the nobility were well affected to the reigning dynasty. They acquiesced reluctantly in the second protectorate of the Duke of York after the battle of St. Albans. Thirty-two temporal peers took an oath of fealty to Henry and his issue in the Coventry Parliament of 1460, which attainted the Duke of York and the earls of Warwick and Salisbury. And in the memorable circumstances of the duke's claim personally made in Parliament, it seems manifest that the Lords complied not only with hesitation but unwillingness, and in fact testified their respect and duty for Henry by confirming the crown to him during his life. The rose of Lancaster blushed upon the banners of the Staffords, the Percies, the Veres, the Hollands, and the Courtneys. All these illustrious families lay crushed for a time under the ruins of their party. But the course of fortune, which has too great a mastery over crowns and sceptres to be controlled by men's affection, invested Edward IV. with a possession which the general consent of the nation both sanctioned and secured. This was effected in no slight degree by the furious spirit of Margaret, who began a system

[85] Hale's Pleas of the Crown, vol. i., pp. 61, 101 (edit. 1736).

of extermination by acts of attainder and execution of prisoners that created abhorrence, though it did not prevent imitation. And the barbarities of her Northern army, whom she led towards London after the battle of Wakefield, lost the Lancastrian cause its former friends, and might justly convince reflecting men that it were better to risk the chances of a new dynasty than trust the kingdom to an exasperated faction.

§ 34. A period of obscurity and confusion ensues, during which we have as little insight into constitutional as general history. There are no contemporary chroniclers of any value, and the rolls of Parliament, by whose light we have hitherto steered, become mere registers of private bills, or of petitions relating to commerce. The reign of Edward IV. is the first during which no statute was passed for the redress of grievances or maintenance of the subject's liberty. Nor is there, if I am correct, a single petition of this nature upon the roll. The reign of Edward IV. was a reign of terror. One half of the noble families had been thinned by proscription; and though generally restored in blood by the reversal of their attainders—a measure certainly deserving of much approbation—were still under the eyes of vigilant and inveterate enemies. Besides the severe proceedings against the Lancastrian party, which might be extenuated by the common pretenses—retaliation of similar proscriptions, security for the actual government, or just punishment of rebellion against a legitimate heir—there are several reputed instances of violence and barbarity in the reign of Edward IV. which have not such plausible excuses. Every one knows the common stories of the citizen who was attainted of treason for an idle speech that he would make his son heir to the crown, the house where he dwelt; and of Thomas Burdett, who wished the horns of his stag in the belly of him who had advised the king to shoot it. Of the former I can assert nothing, though I do not believe it to be accurately reported. But certainly the accusation against Burdett, however iniquitous, was not confined to these frivolous words; which, indeed, do not appear in his indictment, or in a passage relative to his conviction in the roll of Parliament. Burdett was a servant and friend of the Duke of Clarence, and sacrificed as a preliminary victim. It was an article of charge against Clarence that he had attempted to persuade the people that "Thomas Burdett, his servant, which was lawfully and truly attainted of treason, was wrongfully put to death." There could, indeed, be no more oppressive usage inflicted upon meaner persons

than this attainder of the Duke of Clarence—an act for which a brother could not be pardoned, had he been guilty, and which deepens the shadow of a tyrannical age, if, as it seems, his offense towards Edward was but levity and rashness.

But whatever acts of injustice we may attribute, from authority or conjecture, to Edward's government, it was very far from being unpopular. His love of pleasure, his affability, his courage and beauty, gave him a credit with his subjects which he had no real virtue to challenge. This restored him to the throne, even against the prodigious influence of Warwick, and compelled Henry VII. to treat his memory with respect, and acknowledge him as a lawful king. The latter years of his reign were passed in repose at home after scenes of unparalleled convulsions, and in peace abroad after more than a century of expensive warfare. He was the first who practised a new method of taking his subjects' money without consent of Parliament, under the plausible name of benevolences. These came in place of the still more plausible loans of former monarchs, and were principally levied on the wealthy traders. Though no complaint appears in the Parliamentary records of his reign, which, as has been observed, complain of nothing, the illegality was undoubtedly felt and resented. In Richard III.'s only Parliament an act was passed which, after reciting in the strongest terms the grievances lately endured, abrogates and annuls forever all exactions under the name of benevolence. The liberties of this country were at least not directly impaired by the usurpation of Richard; but from an act so deeply tainted with moral guilt, as well as so violent in all its circumstances, no substantial benefit was likely to spring. Whatever difficulty there may be in deciding upon the fate of Richard's nephews after they were immured in the Tower, the more public parts of the transaction bear unequivocal testimony to his ambitious usurpation.[56] It would, therefore, be foreign to the purpose of this chapter to dwell upon his assumption of the regency, or upon the sort of election, however curious and remarkable, which gave a pretended authority to his usurpation of the throne. Neither of these has ever been alleged by any party in the way of constitutional precedent.

§ 35. At this epoch I terminate these inquiries into the

[56] The long-debated question as to the murder of Edward and his brother seems to me more probably solved on the common supposition that it was really perpetrated by the orders of Richard, than on that of Walpole, Carte, Henry, and Laing, who maintain that the Duke of York, at least, was in some way released from the Tower, and reappeared as Perkin Warbeck. But a very strong conviction either way is not readily attainable.

English constitution. From the accession of the house of Tudor a new period is to be dated in our history, far more prosperous in the diffusion of opulence and the preservation of general order than the preceding, but less distinguished by the spirit of freedom and jealousy of tyrannical power. We have seen, through the twilight of our Anglo-Saxon records, a form of civil policy established by our ancestors, marked, like the kindred governments of the Continent, with aboriginal Teutonic features; barbarous indeed, and insufficient for the great ends of society, but capable and worthy of the improvement it has received, because actuated by a sound and vital spirit, the love of freedom and of justice. From these principles arose that venerable institution, which none but a free and simple people could have conceived, trial by peers—an institution common in some degree to other nations, but which, more widely extended, more strictly retained, and better modified among ourselves, has become perhaps the first, certainly among the first, of our securities against arbitrary government. We have seen a foreign conqueror and his descendants trample almost alike upon the prostrate nation and upon those who had been companions of their victory, introduce the servitudes of feudal law with more than their usual rigor, and establish a large revenue by continual precedents upon a system of universal and prescriptive extortion. But the Norman and English races, each unfit to endure oppression, forgetting their animosities in a common interest, enforce by arms the concession of a great charter of liberties. Privileges wrested from one faithless monarch are preserved with continual vigilance against the machinations of another; the rights of the people become more precise, and their spirit more magnanimous, during the long reign of Henry III. With greater ambition, and greater abilities than his father, Edward I. attempts in vain to govern in an arbitrary manner, and has the mortification of seeing his prerogative fettered by still more important limitations. The great council of the nation is opened to the representatives of the Commons. They proceed by slow and cautious steps to remonstrate against public grievances, to check the abuses of administration, and sometimes to chastise public delinquency in the officers of the crown. A number of remedial provisions are added to the statutes; every Englishman learns to remember that he is the citizen of a free state, and to claim the common law as his birthright, even though the violence of power should interrupt its enjoyment. It were a strange misrepresentation of history to as-

sert that the constitution had attained any thing like a perfect state in the fifteenth century; but I know not whether there are any essential privileges of our countrymen, any fundamental securities against arbitrary power, so far as they depend upon positive institution, which may not be traced to the time when the house of Plantagenet filled the English throne.

NOTES TO CHAPTER VIII.—PART III.

I. MUNICIPAL RIGHTS OF LONDON.

London was, from a very early period, divided into wards, answering to hundreds in the county; each having its own ward-mote, or leet, under its elected alderman. "The city of London, as well within the walls as its liberties without the walls, has been divided from time immemorial into wards, bearing nearly the same relation to the city that the hundred anciently did to the shire. Each ward is, for certain purposes, a distinct jurisdiction. The organization of the existing municipal constitution of the city is, and always has been, as far as can be traced, entirely founded upon the ward system." (Introduction to the French Chronicle of London.—Camden Society, 1844.) But the portreeve of London, their principal magistrate, appears to have been appointed by the crown. It was not till 1188, the year before the death of Henry II., that Henry Fitzalwyn, ancestor of the present Lord Beaumont,* became the first mayor of London. But he also was nominated by the crown, and remained twenty-four years in office. In the same year the first sheriffs are said to have been made (*facti*). But John, immediately after his accession in 1199, granted the citizens leave to choose their own sheriffs. And his charter of 1215 permits them to elect annually their mayor. (Maitland's Hist. of London, pp. 74, 76.) We read, however, under the year 1200, in the ancient chronicle previously quoted, that twenty-five of the most discreet men of the city were chosen and sworn to advise for the city, together with the mayor. These were evidently different from the aldermen, and are the original common council of the city. They were perhaps meant in a later entry (1229): "Omnes aldermanni et magnates civitatis per assensum universorum civium," who are said to have agreed never to permit a sheriff to remain in office during two consecutive years.

The city and liberties of London were not wholly under the jurisdiction of the several ward-motes and their aldermen. Land-holders, secular and ecclesiastical, possessed their exclusive sokes, or jurisdictions, in parts of both. One of these has left its name to the ward of Portsoken. The prior of the Holy Trinity, in right of this district, ranked as an alderman, and held a regular ward-mote. The wards of Farringdon are denominated from a family of that name, who held a part of them by hereditary right as their territorial franchise. These sokes gave way so gradually before the power of the citizens, with whom, as may be supposed, a perpetual conflict was maintained, that there were nearly thirty of them in the early part of the reign of Henry III., and upward of twenty in that of Edward I. With the exception of Portsoken, they were not commensurate with the city wards, and we find the juries of the wards, in the third of Edward I., presenting the sokes as liberties enjoyed by private persons or ecclesiastical corporations, to the detriment of the crown. But, though the lords of these sokes trenched materially on the exclusive privileges of the city, it is remarkable that, no condition but inhabitancy being required in the thirteenth century for civic franchises, both they and their tenants were citizens, having individually a voice in municipal affairs, though exempt from municipal jurisdiction. I have taken most of this paragraph from a valuable though short notice of the state of London in the thirteenth century, published in the fourth volume of the Archæological Journal (p. 273).

* This pedigree is elaborately traced by Mr. Stapleton, in his excellent introduction to the old chronicle of London, already quoted. The name Alwyn appears rather Saxon than Norman, so that we may presume the first mayor to have been of English descent; but whether he were a merchant, or a land-owner living in the city, must be undecided.

The inference which suggests itself from these facts is that London, for more than two centuries after the Conquest, was not so exclusively a city of traders, a democratic municipality, as we have been wont to conceive. And as this evidently extends back to the Anglo-Saxon period, it both lessens the improbability that the citizens bore at times a part in political affairs, and exhibits them in a new light, as lords and tenants of lords, as well as, what of course they were in part, engaged in foreign and domestic commerce. It will strike every one, in running over the list of mayors and sheriffs in the thirteenth century, that a large proportion of the names are French; indicating, perhaps, that the territorial proprietors whose sokes were intermingled with the city had influence enough, through birth and wealth, to obtain an election. The general polity, Saxon and Norman, was aristocratic; whatever infusion there might be of a more popular scheme of government, and much certainly there was, could not resist, even if resistance had been always the people's desire, the joint predominance of rank, riches, military habits, and common alliance, which the great baronage of the realm enjoyed. London, nevertheless, from its populousness, and the usual character of cities, was the centre of a democratic power, which, bursting at times into precipitate and needless tumult easily repressed by force, kept on its silent course till, near the end of the thirteenth century, the rights of the citizens and burgesses in the legislature were constitutionally established.

II. POPULAR POETRY.

The public history of Europe in the Middle Ages inadequately represents the popular sentiment, or only when it is expressed too loudly to escape the regard of writers intent sometimes on less important subjects. But when we descend below the surface, a sullen murmur of discontent meets the ear, and we perceive that mankind was not more insensible to wrongs and sufferings than at present. Besides the various outbreakings of the people in several counties, and their complaints in Parliament, after the Commons obtained a representation, we gain a conclusive insight into the spirit of the times by their popular poetry. Two very interesting collections of this kind have been published by the Camden Society: one, the poems attributed to Walter Mapes; the other, the Political Songs of England, from John to Edward II.

Mapes lived under Henry II., and has long been known as the reputed author of humorous Latin verses; but it seems much more probable that the far greater part of the collection lately printed is not from his hand. They may pass, not for the production of a single person, but rather of a class, during many years, or, in general words, a century, ending with the death of Henry III. in 1272. Many of them are professedly written by an imaginary Golias.

"They are not the expressions of hostility of one man against an order of monks, but of the indignant patriotism of a considerable portion of the English nation against the encroachments of civil and ecclesiastical tyranny."—(Introduction to Poems ascribed to Walter Mapes, p. 21.) The poems in this collection reflect almost entirely on the pope and the higher clergy. They are all in rhyming Latin, and chiefly, though with exceptions, in the loose trochaic metre called Leonine. The authors, therefore, must have been clerks, actuated by the spirit which, in a Church of great inequality in its endowments, and with a very numerous body of poor clergy, is apt to gain strength, but certainly, as ecclesiastical history bears witness, not one of mere envious malignity towards the prelates and the court of Rome. These deserved nothing better, in the thirteenth century, than biting satire and indignant reproof, and the poets were willing enough to bestow both.

But this popular poetry of the Middle Ages did not confine itself to the Church. In the collection entitled "Political Songs" we have some reflecting on Henry III., some on the general administration. The famous song on the battle of Lewes, in 1264, is the earliest in English; but in the reign of Edward I. several occur in that language. Others are in French or in Latin; one complaining of the taxes is in an odd mixture of these two languages; which, indeed, is not without other examples in mediæval poetry. These Latin songs could not, of course, have been generally understood. But what the priests sung in Latin, they said in English; the lower clergy fanned the flame, and gave utterance to what others felt. It may, perhaps, be remarked, as a proof of general sympathy with the democratic spirit which was then fermenting, that we have a song of exultation on the great defeat which Philip IV. had just sustained at Courtrai, in 1302, by the burgesses of the Flemish cities, on whose liberties he had attempted to trample (p. 187). It is true that Edward I. was on ill terms with France, but the political interests of the king would not, perhaps, have dictated the popular ballad.

Some of the political songs are written in France, though relating to our kings John and Henry III. Deducting these, we have two in Latin for the former reign; seven in Latin, three in French (or what the editor calls Anglo-Norman, which is really the same thing), one in a mixture of the two, and one in English, for the reign of Henry III. In the reigns of Edward I. and Edward II. we have eight in Latin, three in French, nine in English, and four in mixed languages—a style employed probably for amusement. It must be observed that a large proportion of these songs contain panegyric and exultation on victory rather than satire; and that of the satire much is general, and much falls on the Church; so that the animadversions on the king and the nobility are not very frequent, though with considerable boldness; but this is more shown in the Latin than the English poems.

ORIGINAL DOCUMENTS.

I. CHARTER OF LIBERTIES OF HENRY I.

Anno Incarnationis Dominicae M°C°I°. Henricus filius Willelmi regis post obitum fratris sui Willelmi, Dei gratia rex Anglorum, omnibus fidelibus salutem.

1. Sciatis me Dei misericordia et communi consilio baronum totius regni Angliae ejusdem regni regem coronatum esse; et quia regnum oppressum erat injustis exactionibus, ego, Dei respectu et amore quem erga vos habeo, sanctam Dei ecclesiam imprimis liberam facio, ita quod nec vendam nec ad firmam ponam, nec mortuo archiepiscopo sive episcopo sive abbate aliquid accipiam de dominico ecclesiae vel de hominibus ejus donec successor in eam ingrediatur. Et omnes malas consuetudines quibus regnum Angliae injuste opprimebatur inde aufero quas malas consuetudines ex parte hic pono:

2. Si quis baronum, comitum meorum sive aliorum qui de me tenent, mortuus fuerit, haeres suus non redimet terram suam sicut faciebat tempore fratris mei, sed justa et legitima relevatione relevabit eam. Similiter et homines baronum meorum justa et legitima relevatione relevabunt terras suas de dominis suis.

3. Et si quis baronum vel aliorum hominum meorum filiam suam nuptum tradere voluerit sive sororem sive neptim sive cognatam, mecum inde loquatur: sed neque ego aliquid de suo pro hac licentia accipiam neque defendam ei quin eam det, excepto si eam vellet jungere inimico meo. Et si mortuo barone sive alio homine meo filia haeres remanserit, illam dabo consilio baronum meorum cum terra sua. Et si mortuo viro uxor ejus remanserit et sine liberis fuerit, dotem suam et maritationem habebit, et eam non dabo marito nisi secundum velle suum.

4. Si vero uxor cum liberis remanserit, dotem quidem et maritationem habebit, dum corpus suum legitime servaverit, et eam non dabo nisi secundum velle suum. Et terrae et liberorum custos erit sive uxor sive alius propinquorum qui justius esse debeat. Et praecipio quod barones mei similiter se contineant erga filios et filias vel uxores hominum suorum.

5. Monetagium commune quod capiebatur per civitates et comitatus quod non fuit tempore regis Edwardi, hoc ne amodo fiat omnino defendo. Si quis captus fuerit sive monetarius sive alius cum falsa moneta, justitia recta inde fiat.

6. Omnia placita et omnia debita quae fratri meo debebantur condono, exceptis rectis firmis meis et exceptis illis quae pacta erant pro aliorum haereditatibus vel pro eis rebus quae justius aliis contingebant. Et si quis pro haereditate sua aliquid pepigerat, illud condono, et omnes relevationes quae pro rectis haereditatibus pactae fuerant.

7. Et si quis baronum vel hominum meorum infirmabitur, sicut ipse dabit vel dare disponet pecuniam suam, ita datam esse concedo. Quod si ipse praeventus armis vel infirmitate, pecuniam suam non dederit vel dare disposuerit, uxor sua sive liberi aut parentes, et legitimi homines ejus eam pro anima ejus dividant, sicut eis melius visum fuerit.

8. Si quis baronum sive hominum meorum forisfecerit, non dabit vadium in misericordia pecuniae, sicut faciebat tempore patris mei vel fratris mei, sed secundum modum forisfacti, ita emendabit sicut emendasset retro a tempore patris mei, in tempore aliorum antecessorum meorum. Quod si perfidiae vel sceleris convictus fuerit, sicut justum fuerit, sic emendet.

9. Murdra etiam retro ab illa die qua in regem coronatus fui omnia condono: et ea quae amodo facta fuerint, juste emendentur secundum lagam regis Edwardi.

10. Forestas communi consensu baronum meorum in manu mea retinui, sicut pater meus eas habuit.

11. Militibus qui per loricas terras suas defendunt, terras dominicarum carrucarum suarum quietas ab omnibus gildis, et omni opere, proprio dono meo concedo, ut sicut tam magno allevamine alleviati sint, ita se equis et armis bene instruant

ad servitium meum et ad defensionem regni mei.

12. Pacem firmam in toto regno meo pono et teneri amodo praecipio.

13. Lagam Edwardi regis vobis reddo cum illis emendationibus quibus pater meus eam emendavit consilio baronum suorum.

14. Si quis aliquid de rebus meis vel de rebus alicujus post obitum Willelmi regis fratris mei ceperit, totum cito sine emendatione reddatur, et si quis inde aliquid retinuerit, ille super quem inventum fuerit mihi graviter emendabit.

Testibus Manricio Lundoniae episcopo et Gundulfo episcopo et Willelmo electo episcopo et Henrico comite et Simone comite et Waltero Giffardo et Rodberto de Monfort et Rogero Bigoto et Henrico de Portu, apud Lundoniam quando fui coronatus.—("Ancient Laws and Institutes," p. 215)

II. CONSTITUTIONS OF CLARENDON.

Anno ab Incarnatione Domini M°C°LX°IV°, papatus Alexandri anno IV^to^, illustrissimi regis Anglorum Henrici secundi anno decimo, in praesentia ejusdem regis, facta est ista recordatio vel recognitio cujusdam partis consuetudinum et libertatum et dignitatum antecessorum suorum, videlicet regis Henrici avi sui, et aliorum quae observari et teneri debent in regno. Et propter dissensiones et discordias quae emerserant inter clerum et Justitias domini regis et barones regni de consuetudinibus et dignitatibus, facta est ista recognitio coram archiepiscopis et episcopis et clero et comitibus et baronibus et proceribus regni. Et easdem consuetudines recognitas per archiepiscopos et episcopos et comites et barones et per nobiliores et antiquiores regni, Thomas Cantuariensis archiepiscopus, et Rogerus Eboracensis archiepiscopus, et Gillebertus Londoniensis episcopus, et Henricus Wiltoniensis episcopus, et Nigellus Eliensis episcopus, et Willelmus Norwicensis episcopus, et Robertus Lincolniensis episcopus, et Hilarius Cicestrensis episcopus, et Jocelinus Sarisberiensis episcopus, et Ricardus Cestrensis episcopus, et Bartholomaeus Exoniensis episcopus, et Robertus Herefordensis episcopus, et David Menevensis episcopus, et Rogerus Wigornensis electus, concesserunt, et in Verbo Veritatis viva voce firmiter promiserunt tenandas et observandas, domino regi et haeredibus suis, bona fide et absque malo ingenio, praesentibus istis: Roberto comite Leghestriae, Reginaldo comite Cornubiae, Conano comite Britanniae, Johanne comite de Augo, Rogero comite de Clara, comite Gaufredo de Mandevilla, Hugone comite Cestriae, Willelmo comite de Arundel, comite Patricio, Willelmo comite de Ferrariis, Ricardo de Luci, Reginaldo de Sancto Walerico, Rogero Bigot, Reginaldo de Warennia, Richero de Aquila, Willelmo de Braiosa, Ricardo de Camvilla, Nigello de Moubrai, Simone de Bello Campo, Humfrido de Boun, Matthaeo de Herefordia, Waltero de Medunna, Manassero Biseth dapifero, Willelmo Malet, Willelmo de Curci, Roberto de Dunstanvilla, Jocelino de Baillolio, Willelmo de Lanvalis, Willelmo de Caisneto, Gaufrido de Ver, Willelmo de Hastinges, Hugone de Morevilla, Alano de Nevilla, Simone filio Petri, Willelmo Malduit camerario, Johanne Malduit, Johanne Mariscallo, Petro de Mara, et multis aliis proceribus et nobilibus regni, tam clericis quam laicis.

Consuetudinum vero et dignatatum regni recognitarum quaedam pars praesenti scripto continetur. Cujus partis capitula haec sunt:

Cap. i. De advocatione et praesentatione ecclesiarum si controversia emerserit inter laicos, vel inter laicos et clericos, vel inter clericos, in curia domini regis tractetur vel terminetur.

Cap. ii. Ecclesiae de feudo domini regis non possunt in perpetuum dari absque assensu et concessione ipsius.

Cap. iii. Clerici rectati et accusati de quacunque re, summoniti a Justitia regis veniant in curiam ipsius, responsuri ibidem de hoc unde videbitur curiae regis quod ibidem sit respondendum; et in curia ecclesiastica, unde videbitur quod ibidem sit respondendum: ita quod Justitia regis mittet in curiam sanctae ecclesiae ad videndum qua ratione res ibi tractabitur. Et si clericus convictus vel confessus fuerit, non debet de cetero eum ecclesia tueri.

Cap. iv. Archiepiscopis, episcopis, et personis regni, non licet exire de regno absque licentia domini regis. Et si exierint, si domino regi placuerit, assecurabunt, quod nec ineundo, nec in moram faciendo, nec in redeundo, perquirent malum vel damnum regi vel regno.

Cap. v. Excommunicati non debent dare vadium ad remanens, nec praestare juramentum, sed tantum vadium et plegium standi judicio ecclesiae ut absolvantur.

Cap. vi. Laici non debent accusari nisi per certos et legales accusatores et testes in praesentia episcopi, ita quod archidiaconus non perdat jus suum; nec quicquam quod inde habere debeat. Et si tales fuerint qui culpantur, quod non velit vel non audeat aliquis eos accusare, vicecomes requisitus ab episcopo faciet jurare duodecim legales homines de vicineto seu

de villa, coram episcopo, quod inde veritatem secundum conscientiam suam manifestabunt.

Cap. vii. Nullus qui de rege tenet in capite, nec aliquis dominicorum ministrorum ejus, excommunicetur, nec terrae alicujus illorum sub interdicto ponantur, nisi prius dominus rex, si in terra fuerit, conveniatur, vel Justitia ejus, si fuerit extra regnum, ut rectum de ipso faciat: et ita ut quod pertinebit ad curiam regiam ibidem terminetur, et de eo quod spectabit ad ecclesiasticam curiam, ad eandem mittatur ut ibidem tractetur.

Cap. viii. De appellationibus si emerserint, ab archidiacono debent procedere ad episcopum, ab episcopo ad archiepiscopum. Et si archiepiscopus defecerit in justitia exhibenda, ad dominum regem perveniendum est postremo, ut praecepto ipsius in curia archiepiscopi controversia terminetur, ita quod non debet ulterius procedere absque assensu domini regis.

Cap. ix. Si calumnia emerserit inter clericum et laicum, vel inter laicum et clericum, de ullo tenemento quod clericus ad eleemosinam velit attrahere, laicus vero ad laicum feudum, recognitione duodecim legalium hominum, per capitalis Justitiae regis considerationem terminabitur, utrum tenementum sit pertinens ad eleemosinam sive ad laicum feudum coram ipso Justitia regis. Et si recognitum fuerit ad eleemosinam pertinere, placitum erit in curia ecclesiastica, si vero ad laicum feudum, nisi ambo de eodem episcopo vel barone advocaverint, erit placitum in curia regia. Sed si uterque advocaverit de feudo illo ante eundem episcopum vel baronem, erit placitum in curia ipsius: ita quod propter factam recognitionem seisinam non amittat, qui prior seisitus fuerat, donec per placitum diratonatum fuerit.

Cap. x. Qui de civitate, vel burgo, vel dominico manerio domini regis fuerit, si ab archidiacono vel episcopo super aliquo delicto citatus fuerit, unde debeat eisdem respondere et ad citationes eorum satisfacere noluerit, bene licet eum sub interdicto ponere, sed non debet excommunicari prinsquam capitalis minister domini regis villae illius conveniatur, et justiciet eum ad satisfactionem venire. Et si minister regis inde defecerit, ipse erit in misericordia domini regis, et exinde poterit episcopus ipsum accusatum ecclesiastica justitia cohibere.

Cap. xi. Archiepiscopi, episcopi, et universae personae regni, qui de rege tenent in capite, habent possessiones suas de domino rege sicut baroniam, et inde respondent Justitiis et ministris regis, et sequuntur et faciunt omnes rectitudines et consuetudines regias, et sicut barones ceteri, debent interesse judiciis curiae domini regis cum baronibus, usque dum perveniatur in judicio ad diminutionem membrorum vel mortem.

Cap. xii. Cum vacaverit archiepiscopatus, vel episcopatus, vel abbatia, vel prioratus de dominio regis, debet esse in manu ipsius, et inde percipiet omnes reditus et exitus sicut dominicos. Et cum ventum fuerit ad consulendum ecclesiae, debet dominus rex mandare potiores personas ecclesiae, et in capella ipsius domini regis debet fieri electio assensu domini regis et consilio personarum regni, quas ad hoc faciendum vocaverit. Et ibidem faciet electus homagium et fidelitatem domino regi sicut ligio domino, de vita sua et de membris et de honore suo terreno, salvo ordine suo, prinsquam sit consecratus.

Cap. xiii. Si quisquam de proceribus regni defortiaverit archiepiscopo, vel episcopo, vel archidiacono, de se vel de suis justitiam exhibere, dominus rex debet eos justiciare. Et si forte aliquis defortiaverit domino regi rectitudinem suam, archiepiscopi et episcopi et archidiaconi debent eum justiciare ut domino regi satisfaciat.

Cap. xiv. Catalla eorum qui sunt in forisfacto regis non detineat ecclesia vel cimiterium contra justitiam regis, quia ipsius regis sunt, sive in ecclesiis sive extra fuerint inventa.

Cap. xv. Placita de debitis, quae fide interposita debentur, vel absque interpositione fidei, sint in justitia regis.

Cap. xvi. Filii rusticorum non debent ordinari absque assensu domini de cujus terra nati dignoscuntur.

Facta est autem praedictarum consuetudinum et dignitatum recordatio regiarum a praefatis archiepiscopis et episcopis et comitibus et baronibus, et nobilioribus, et antiquioribus regni, apud Clarendonam quarto die ante Purificationem Beatae Mariae perpetuae Virginis, domino Henrico cum patre suo domino rege ibidem praesente. Sunt autem et aliae multae et magnae consuetudines et dignitates sanctae matris ecclesiae et domini regis et baronum regni, quae in hoc scripto non continentur. Quae salvae sint sanctae ecclesiae et domino regi et haeredibus suis et baronibus regni, et in perpetuum inviolabiliter observentur.—(Lyttelton's "Life of Henry II.," vol. iv., pp. 182–185, from MS. Cotton, Claudius B. 2.)

III. ASSIZE OF CLARENDON.

Incipit Assisa de Clarenduna facta a rege Henrico, scilicet secundo, de assensu archiepiscoporum, episcoporum, abbatum, comitum, baronum, totius Angliae.

1. Inprimis statuit praedictus rex Henricus de consilio omnium baronum suorum, pro pace servanda et justitia tenenda, quod per singulos comitatus inquiratur, et per singulos hundredos per xli. legaliores homines de hundredo, et per iv. legaliores homines de qualibet villata, per sacramentum quod illi verum dicent: si in hundredo suo vel villata sua sit aliquis homo qui sit rettatus vel publicatus quod ipse sit robator vel murdrator vel latro vel aliquis qui sit receptor robatorum vel murdratorum vel latronum, postquam dominus rex fuit rex. Et hoc inquirant Justitiae coram se, et vicecomites coram se.

2. Et qui invenietur per sacramentum praedictorum rettatus vel publicatus quod fuerit robator vel murdrator vel latro vel receptor eorum, postquam dominus rex fuit rex, capiatur et eat ad juisam aquae, et juret quod ipse non fuit robator vel murdrator vel latro vel receptor eorum postquam dominus rex fuit rex, de valentia v. solidorum quod sciat.

3. Et si dominus ejus qui captus fuerit vel dapifer ejus vel homines ejus requisierint eum per plegium infra tertium diem postquam captus fuerit, replegiatur ipse et catalla ejus donec ipse faciat legem suam.

4. Et quando robator vel murdrator vel latro vel receptores eorum capti fuerint per praedictum sacramentum, si Justitiae non fuerint tam cito venturae in illum comitatum ubi capti fuerint, vicecomites mandent propinquori Justitiae per aliquem intelligentem hominem, quod tales homines ceperint; et Justitiae remandabunt vicecomitibus ubi voluerint quod illi ducantur ante illos: et vicecomites illos ducant ante Justitias; et cum illis ducant de hundredo et de villata ubi capti fuerint, duos legales homines ad portandum recordationem comitatus et hundredi, quare capti fuerint, et ibi ante Justitiam facient legem suam.

5. Et de illis qui capti fuerint per praedictum sacramentum hujus Assisae, nullus habeat curiam vel justitiam nec catalla, nisi dominus rex in curia sua coram Justitiis ejus, et dominus rex habebit omnia catalla eorum. De illis vero qui capti fuerint aliter quam per hoc sacramentum, sit sicut esse solet et debet.

6. Et vicecomites qui eos ceperint ducant eos ante Justitiam sine alia summonitione quam inde habeant. Et cum robatores vel murdratores vel latrones et receptores eorum, qui capti fuerint per sacramentum vel aliter, tradantur vicecomitibus, et ipsi recipiant eos statim sine dilatione.

7. Et in singulis comitatibus ubi non sunt gaiolae, fiant in burgo vel aliquo castello regis de denariis regi set bosco ejus si prope fuerit, vel de alio bosco propinquo, per visum servientium regis, ad hoc ut vicecomites in illis possint illos qui capti fuerint per ministros qui hoc facere solent et per servientes suos, custodire.

8. Vult etiam dominus rex quod omnes veniant ad comitatus ad hoc sacramentum faciendum, ita quod nullus remaneat pro libertate aliqua quam habeat, vel curia vel soca quam habuerit, quin veniant ad hoc sacramentum faciendum.

9. Et non sit aliquis infra castellum vel extra castellum, nec etiam in honore de Walingeford, qui vetet vicecomites intrare in curiam vel terram suam ad videndos francos plegios, et quod omnes sint sub plegiis: et ante vicecomites mittantur sub libero plegio.

10. Et in civitatibus vel burgis nullus habeat homines vel recipiat in domo sua vel terra sua vel soca sua, quos non in manu capiat quod eos habebit coram Justitia si requisiti fuerint, vel sint sub francoplegio.

11. Et nulli sint in civitate vel burgo vel castello vel extra, nec in honore etiam de Walingeford, qui vetent vicecomites intrare in terram suam vel socam suam, ad capiendum illos qui rettati fuerint vel publicati quod sint robatores vel murdratores vel latrones vel receptores eorum, vel utlagati vel rettati deforesta; sed praecipit quod juvent illos ad capiendum eos.

12. Et si aliquis fuerit captus qui fuerit saisiatus de roberia vel latrocinio, si ipse fuerit diffamatus et habeat malum testimonium de publicamento, et non habeat warantum, non habeat legem. Et si non fuerit publicatus pro saisina quam habet, eat ad aquam.

13. Et si aliquis fuerit recognoscens coram legalibus hominibus vel hundredis de roberia vel murdro vel latrocinio vel de receptione eorum, et postea negare voluerit, non habeat legem.

14. Vult etiam dominus rex quod ipsi qui facient legem suam et mundi erant per legem, si ipsi fuerint de pessimo testimonio, et publice et turpiter diffamati testimonio multorum et legalium hominum, foras jurent terras regis, ita quod infra viii. dies mare transibunt, nisi aura eos detinuerit; et cum prima aura quam habebunt postea mare transibunt, et ultra in Angliam non revertentur nisi per misericordiam domini regis: et ibi sint utlagati et si redierent; et si redierint capiantur sicut utlagati.

15. Et prohibet dominus rex ne aliquis vaivus, id est vagus vel ignotus, hospitetur alicubi nisi in burgo, et ibi non hospitetur nisi una nocte, nisi ibi infirmetur,

vel equus ejus, ita quod monstrare possit monstrabile essonium.

16. Et si ibi fuerit plusquam una nocte, capiatur ille et teneatur donec dominus ejus venerit ad eam plegiandum, vel donec ipse habeat salvos plegios; et ille similiter capiatur qui hospitatus fuerit.

17. Et si aliquis vicecomes mandaverit alii vicecomiti quod homines fugerint de comitatu suo in alium comitatum pro roberia vel pro murdro vel latrocinio vel receptione eorum, vel pro utlagia vel pro tetta forestae regis, ille capiat eos: et etiam si per se vel per alios sciat quod tales homines fugerint in comitatum suum, capiat eos et custodiat donec de eis habeat salvos plegios.

18. Et omnes vicecomites faciant inbreviari omnes fugitivos, qui fugerint de suis comitatibus; et hoc faciant coram comitatibus, et illorum nomina scripta portabunt ante Justitias cum primo ad illos venerint, ut illi quaerantur per totam Angliam, et eorum catalla capiantur ad opus regis.

19. Et vult dominus rex quod ex quo vicecomites susceperint summonitiones Justitiarum errantium, ut ipsi cum comitatibus suis sint ante illos, ipsi congregabunt comitatus suos et inquirent omnes qui de novo venerint in suos comitatus post hanc assisam; et illos mittent per plegios, quod erunt coram Justitias, vel illos custodient, donec Justitiae ad eos venerint, et tunc habebunt coram Justitias.

20. Prohibet etiam dominus rex ne monachi vel canonici vel aliqua domus religionum recipiant aliquem de populo minuto in monachum vel canonicum vel fratrem, donec sciatur de quali testimonio ipse fuerit, nisi ipse fuerit infirmus ad mortem.

21. Prohibet etiam dominus rex, quod nullus in tota Anglia receptet in terra sua vel soca sua vel domo sub se, aliquem de secta illorum renegatorum qui excommunicati et signati fuerunt apud Oxeneforde. Et si quis eos receperit, ipse erit in misericordia domini regis; et domus, in qua illi fuerint portetur extra villam et comburatur. Et hoc jurabit unusquisque vicecomes quod hoc tenebit, et hoc jurare faciet omnes ministros suos, et dapiferos baronum, et omnes milites et franco tenentes de comitatibus.

22. Et vult dominus rex quod haec assisa teneatur in regno suo quamdiu ei placuerit.

-("M.S. Bodl. Rawlinson," C. 641.)

IV. MAGNA CHARTA.

Johannes Dei gratia rex Angliae, dominus Hyberniae, dux Normanniae et Aquitanniae, comes Andegaviae, archiepiscopis, episcopis, abbatibus, comitibus, baronibus, justiciariis, forestariis, vicecomitibus, praepositis, ministris et omnibus ballivis et fidelibus suis salutem. Sciatis nos intuitu Dei et pro salute animae nostrae et omnium antecessorum et haeredum nostrorum, ad honorem Dei et exaltationem sanctae ecclesiae, et emendationem regni nostri, per concilium venerabilium patrum nostrorum, Stephani Cantuariensis archiepiscopi totius Angliae primatis et sanctae Romanae ecclesiae cardinalis, Henrici Dubliniensis archiepiscopi, Willelmi Londoniensis, Petri Wintoniensis, Joscelini Bathoniensis et Glastoniensis, Hugonis Lincolniensis, Walteri Wygornensis, Willelmi Coventrensis, et Benedicti Roffensis episcoporum; magistri Pandulfi domini papae subdiaconi et familiaris, fratris Eymerici magistri militiae templi in Anglia; et nobilium virorum Willelmi Mariscalli comitis Pembrok, Willelmi comitis Saresberiae, Willelmi comitis Warenniae, Willelmi comitis Arundelliae, Alani de Galweya constabularii Scottiae, Warini filii Geroldi, Petri filii Hereberti, Huberti de Burgo senescalli Pictaviae, Hugonis de Nevilla, Mathei filii Hereberti, Thomae Basset, Alani Basset, Philippi de Albiniaco, Roberti de Roppelay, Johannis Mariscalli, Johannis filii Hugonis et aliorum fidelium nostrorum;

1. In primis concessisse Deo et hac praesenti carta nostra confirmasse, pro nobis et haeredibus nostris in perpetuum, quod Anglicana ecclesia libera sit, et habeat jura sua integra, et libertates suas illaesas; et ita volumus observari; quod apparet ex eo quod libertatem electionum, quae maxima et magis necessaria reputatur ecclesiae Anglicanae, mera et spontanea voluntate, ante discordiam inter nos et barones nostros motam, concessimus et carta nostra confirmavimus, et eam optinuimus a domino papa Innocentio tertio confirmari; quam et nos observabimus et ab haeredibus nostris in perpetuum bona fide volumus observari. Concessimus etiam omnibus liberis hominibus regni nostri, pro nobis et haeredibus nostris in perpetuum, omnes libertates subscriptas, habendas et teneudas, eis et haeredibus suis, de nobis et haeredibus nostris;

2. Si quis comitum vel baronum nostrorum, sive aliorum tenentium de nobis in capite per servitium militare, mortuus fuerit, et cum decesserit haeres suus plenae aetatis fuerit et relevium debeat, habeat haereditatem suam per antiquum relevium; scilicet haeres vel haeredes comitis, de baronia comitis integra per centum libras: haeres vel haeredes baronis, de baronia in-

tegra per centum libras; haeres vel haeredes militis, de feodo militis integro per centum solidos ad plus; et qui minus debuerit minus det secundum antiquam consuetudinem feodorum.

3. Si autem haeres alicujus talium fuerit infra aetatem et fuerit in custodia, cum ad aetatem pervenerit, habeat haereditatem suam sine relevio et sine fine.

4. Custos terrae hujusmodi haeredis qui infra aetatem fuerit, non capiat de terra haeredis nisi rationabiles exitus, et rationabiles consuetudines, et rationabilia servitia, et hoc sine destructione et vasto hominum vel rerum; et si nos commiserimus custodiam alicujus talis terrae vicecomiti vel alicui alii qui de exitibus, illius nobis respondere debeat, et ille destructionem de custodia fecerit vel vastum, nos ab illo capiemus emendam, et terra committatur duobus legalibus et discretis hominibus de feodo illo, qui de exitibus respondeant nobis vel ei cui eos assignaverimus; et si dederimus vel vendiderimus alicui custodiam alicujus talis terrae, et ille destructionem inde fecerit vel vastum, amittat ipsam custodiam et tradatur duobus legalibus et discretis hominibus de feodo illo qui similiter nobis respondeant sicut praedictum est.

5. Custos autem, quamdiu custodiam terrae habuerit, sustentet domos, parcos, vivaria, stagna, molendina, et cetera ad terram illam pertinentia, de exitibus terrae ejusdem; et reddat haeredi, cum ad plenam aetatem pervenerit, terram suam totam instauratam de carrucis et wainnagiis secundum quod tempus wainnagii exiget et exitus terrae rationabiliter poterunt sustinere.

6. Haeredes maritentur absque disparagatione, ita tamen quod, antequam contrahatur matrimonium, ostendatur propinquis de consanguinitate ipsius haeredis.

7. Vidua post mortem mariti sui statim et sine difficultate habeat maritagium et haereditatem suam, nec aliquid det pro dote sua, vel pro maritagio suo, vel haereditate sua quam haereditatem maritus suus et ipsa tenuerint die obitus ipsius mariti, et maneat in domo mariti sui per quadraginta dies post mortem ipsius infra quos assignetur ei dos sua.

8. Nulla vidua distringatur ad se maritandum dum voluerit vivere sine marito, ita tamen quod securitatem faciat quod se non maritabit sine assensu nostro, si de nobis tenuerit, vel sine assensu domini sui de quo tenuerit, si de alio tenuerit.

9. Nec nos nec ballivi nostri seisiemus terram aliquam nec redditum pro debito aliquo, quamdiu catalla debitoris sufficiant ad debitum reddendum nec pleggii ipsius debitoris distringantur quamdiu ipse capitalis debitor sufficit ad solutionem debiti; et si capitalis debitor defecerit in solutione debiti, non habens unde solvat, pleggii respondeant de debito; et, si voluerint, habeant terras et redditus debitoris donec sit eis satisfactum de debito quod ante pro eo solverint, nisi capitalis debitor monstraverit se esse quietum inde versus eosdem pleggios.

10. Si quis mutuo ceperit aliquid a Judaeis, plus vel minus, et moriatur antequam debitum illum solvatur, debitum non usuret quamdiu haeres fuerit infra aetatem, de quocumque teneat; et si debitum illud inciderit in manus nostras, nos non capiemus nisi catallum contentum in carta.

11. Et si quis moriatur, et debitum debeat Judaeis, uxor ejus habeat dotem suam, et nihil reddat de debito illo; et si liberi ipsius defuncti qui fuerint infra aetatem remanserint, provideantur eis necessaria secundum tenementum quod fuerit defuncti, et de residuo solvatur debitum, salvo servitio dominorum; simili modo fiat de debitis quae debentur aliis quam Judaeis.

12. Nullum scutagium vel auxilium ponatur in regno nostro, nisi per commune consilium regni nostri, nisi ad corpus nostrum redimendum, et primogenitum filium nostrum militem faciendum, et ad filiam nostram primogenitam semel maritandam, et ad haec non fiat nisi rationabilis auxilium: simili modo fiat de auxiliis de civitate Londoniarum.

13. Et civitas Londoniarum habeat omnes antiquas libertates et liberas consuetudines suas, tam per terras, quam per aquas. Praeterea volumus et concedimus quod omnes aliae civitates, et burgi, et villae, et portus, habeant omnes libertates et liberas consuetudines suas.

14. Et ad habendum commune consilium regni, de auxilio assidendo aliter quam in tribus casibus praedictis, vel de scutagio assidendo, summoneri faciemus archiepiscopos, episcopos, abbates, comites, et majores barones, sigillatim per litteras nostras; et praeterea faciemus summoneri in generali, per vicecomites et ballivos nostros, omnes illos qui de nobis tenent in capite; ad certum diem, scilicet ad terminum quadraginta dierum ad minus, et ad certum locum; et in omnibus litteris illius summonitionis causam summonitionis exprimemus; et sic facta summonitione negotium ad diem assignatum procedat secundum consilium illorum qui praesentes fuerint, quamvis non omnes summoniti venerint.

15. Nos non concedemus de cetero alicui quod capiat auxilium de liberis hominibus

bus suis, nisi ad corpus suum redimendum, et ad faciendum primogenitum filium suum militem, et ad primogenitam filiam suam semel maritandam, et ad haec non fiat nisi rationabile auxilium.

16. Nullus distringatur ad faciendum majus servitium de feodo militis, nec de allo libero tenemento, quam inde debetur.

17. Communia placita non sequantur curiam nostram sed teneantur in aliquo loco certo.

18. Recognitiones de nova dissaisina, de morte antecessoris, et de ultima praesentatione, non capiantur nisi in suis comitatibus et hoc modo: nos, vel si extra regnum fuerimus, capitalis justiciarius noster, mittemus duos justiciarios per unumquemque comitatum per quatuor vices in anno, qui, cum quatuor militibus cujuslibet comitatus electis per comitatum, capiant in comitatu et in die et loco comitatus assisas praedictas.

19. Et si in die comitatus assisae praedictae capi non possint, tot milites et libere tenentes remaneant de illis qui interfuerint comitatui die illo, per quos possint judicia sufficienter fieri, secundum quod negotium fuerit majus vel minus.

20. Liber homo non amercietur pro parvo delicto, nisi secundum modum delicti; et pro magno delicto amercietur secundum magnitudinem delicti, salvo contenemento suo; et mercator eodem modo salva mercandisa sua; et villanus eodem modo amercietur salvo wainnagio suo, si inciderint in misericordiam nostram; et nulla praedictarum misericordiarum ponatur, nisi per sacramentum proborum hominum de visneto.

21. Comites et barones non amercientur nisi per pares suos, et non nisi secundum modum delicti.

22. Nullus clericus amercietur de laico tenemento suo, nisi secundum modum aliorum praedictorum, et non secundum quantitatem beneficii sui ecclesiastici.

23. Nec villa nec homo distringatur facere pontes ad riparias, nisi qui ab antiquo et de jure facere debent.

24. Nullus vicecomes, constabularius, coronatores, vel alii ballivi nostri, teneant placita coronae nostrae.

25. Omnes comitatus, hundredi, wapentakii, et trethingii, sint ad antiquas firmas absque ullo incremento, exceptis dominicis manerils nostris.

26. Si aliquis tenens de nobis laicum feodum moriatur, et vicecomes vel ballivus noster ostendat litteras nostras patentes de summonitione nostra de debito quod defunctus nobis debuit, licet vicecomiti vel ballivo nostro attachiare et inbreviare catalla defuncti inventa in laico feodo, ad valentiam illius debiti, per visum legalium hominum, ita tamen quod nihil inde amoveatur, donec persolvatur nobis debitum quod clarum fuerit; et residuum relinquatur executoribus ad faciendum testamentum defuncti; et, si nihil nobis debeatur ab ipso, omnia catalla cedant defuncto, salvis uxori ipsius et pueris rationabilibus partibus suis.

27. Si aliquis liber homo intestatus decesserit, catalla sua per manus propinquorum parentum et amicorum suorum, per visum ecclesiae distribuantur, salvis unicuique debitis quae defunctus ei debebat.

28. Nullus constabularius, vel alius ballivus noster, capiat blada vel alia catalla alicujus, nisi statim inde reddat denarios, aut respectum inde habere possit de voluntate venditoris.

29. Nullus constabularius distringat aliquem militem ad dandum denarios pro custodia castri, si facere voluerit custodiam illam in propria persona sua, vel per alium probum hominem, si ipse eam facere non possit propter rationabilem causam; et si nos duxerimus vel miserimus eum in exercitum, erit quietus de custodia, secundum quantitatem temporis quo per nos fuerit in exercitu.

30. Nullus vicecomes, vel ballivus noster, vel aliquis alius, capiat equos vel carreta alicujus liberi hominis pro cariagio faciendo, nisi de voluntate ipsius liberi hominis.

31. Nec nos nec ballivi nostri capiemus alienum boscum ad castra, vel alia agenda nostra, nisi per voluntatem ipsius cujus boscus ille fuerit.

32. Nos non tenebimus terras illorum qui convicti fuerint de felonia, nisi per unum annum et unum diem, et tunc reddantur terrae dominis feodorum.

33. Omnes kydelli de cetero deponantur penitus de Thamisia, et de Medewaye, et per totam Angliam, nisi per costeram maris.

34. Breve quod vocatur *Praecipe* de cetero non fiat alicui de aliquo tenemento unde liber homo amittere possit curiam suam.

35. Una mensura vini sit per totum regnum nostrum, et una mensura cervisiae, et una mensura bladi scilicet quarterium Londoniense, et una latitudo pannorum tinctorum, et russettorum, et halbergettorum, scilicet duae ulnae infra listas; de ponderibus autem sit ut de mensuris.

36. Nihil detur vel capiatur de cetero pro brevi inquisitionis de vita vel membris, sed gratis concedatur et non negetur.

37. Si aliquis teneat de nobis per feodifirmam, vel per sokagium, vel per burga-

gium, et de alio terram teneat per servitium militare, nos non habebimus custodiam haeredis nec terrae suae quae est de feodo alterius, occasione illius feodifirmae, vel sokagii, vel burgagii; nec habebimus custodiam illius feodifirmae, vel sokagii, vel burgagii, nisi ipsa feodifirma debeat servitium militare. Nos non habebimus custodiam haeredis vel terrae alicujus, quam tenet de alio per servitium militare, occasione alicujus parvae sergenteriae quam tenet de nobis per servitium reddendi nobis cultellos, vel sagittas, vel hujusmodi.

38. Nullus ballivus ponat de cetero aliquem ad legem simplici loquela sua, sine testibus fidelibus ad hoc inductis.

39. Nullus liber homo capiatur, vel imprisonetur, aut dissaisiatur, aut utlagetur, aut exuleter, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terrae.

40. Nulli vendemus, nulli negabimus, aut differemus, rectum aut justiciam.

41. Omnes mercatores habeant salvum et securum exire de Anglia, et venire in Angliam, et morari et ire per Angliam, tam per terram quam per aquam, ad emendum et vendendum, sine omnibus malis toltis, per antiquas et rectas consuetudines, praeterquam in tempore gwerrae, et si sint de terra contra nos gwerrina; et si tales inveniantur in terra nostra in principio gwerrae, attachientur sine dampno corporum et rerum, donec sciatur a nobis vel capitali justiciario nostro, quomodo mercatores terrae nostrae tractentur, qui tunc invenientur in terra contra nos gwerrina; et si nostri salvi sint ibi, alii salvi sint in terra nostra.

42. Liceat unicuique de cetero exire de regno nostro, et redire, salvo et secure, per terram et per aquam, salva fide nostra, nisi tempore gwerrae per aliquod breve tempus, propter communem utilitatem regni, exceptis imprisonatis et utlagatis secundum legem regni, et gente de terra contra nos gwerrina, et mercatoribus de quibus fiat sicut praedictum est.

43. Si quis tenuerit de aliqua escaeta, sicut de honore Walingeford, Notingeham, Bononiae, Lainkastriae, vel de aliis eskaetis, quae sunt in manu nostra, et sunt baroniae, et obierit, haeres ejus non det aliud relevium, nec faciat nobis alind servitium quam faceret baroni si baronia illa esset in manu baronis; et nos eodem modo eam tenebimus quo baro eam tenuit.

44. Homines qui manent extra forestam non veniant de cetero coram justiciariis nostris de foresta per communes summonitiones, nisi sint in placito, vel pleggii alicujus vel aliquorum, qui attachiati sint pro foresta.

45. Nos non faciemus justiciarios, constabularios, vicecomites, vel ballivos, nisi de talibus qui sciant legem regni et eam bene velint observare.

46. Omnes barones qui fundaverunt abbatias, unde habent cartas regum Angliae, vel antiquam tenuram, habeant earum custodiam cum vacaverint, sicut habere debent.

47. Omnes forestae quae aforestatae sunt tempore nostro, statim deafforestentur; et ita fiat de ripariis quae per nos tempore nostro positae sunt in defenso.

48. Omnes malae consuetudines de forestis et warennis, et de forestariis et warennariis, vicecomitibus et eorum ministris, ripariis et earum custodibus, statim inquirantur in quolibet comitatu per duodecim milites juratos de eodem comitatu, qui debent eligi per probos homines ejusdem comitatus, et infra quadraginta dies post inquisitionem factam, penitus, ita quod nunquam revocentur, deleantur per eosdem, ita quod nos hoc sciamus prius, vel justiciarius noster, si in Anglia non fuerimus.

49. Omnes obsides et cartas statim redemus quae liberatae fuerunt nobis ab Anglicis in securitatem pacis vel fidelis servitii.

50. Nos amovebimus penitus de ballis parentes Gerardi de Athyes, quod de cetero nullam habeant balliam in Anglia; Engelardum de Cygonils, Andrenm, Petrum et Gyonem de Cancellis, Gyonem de Cygonils, Galfridum de Martyni et fratres ejus, Philippum Mark et fratres ejus, et Galfridum nepotem ejus, et totam sequelam eorumdem.

51. Et statim post pacis reformationem amovebimus de regno omnes alienigenas milites, ballistarios, servientes, stipendiarios, qui venerint cum equis et armis ad nocumentum regni.

52. Si quis fuerit disseisitus vel elongatus per nos sine legali judicio parium suorum, de terris, castallis, libertatibus, vel jure suo, statim ea ei restituemus: et si contentio super hoc orta fuerit, tunc inde fiat per judicium viginti quinque baronum, de quibus fit mentio inferius in securitate pacis: de omnibus autem illis de quibus aliquis disseisitus fuerit vel elongatus sine legali judicio parium suorum, per Henricum regem patrem nostrum vel per Ricardum regem fratrem nostrum, quae in manu nostra habemus, vel quae alii tenent, quae nos oporteat warantizare, respectum habebimus usque ad communem terminum crucesignatorum; exceptis illis de quibus placitum motum fuit vel inquisitio facta

per praeceptum nostrum, ante susceptionem crucis nostrae: cum autem redierimus de peregrinatione nostra, vel si forte remanserimus a peregrinatione nostra, statim inde plenam justiciam exhibebimus.

53. Eundem autem respectum habebimus, et eodem modo, de justicia exhibenda de forestis deafforestandis vel remanendis forestis, quas Henricus pater noster vel Ricardus frater noster afforestaverunt, et de custodiis terrarum quae sunt de alieno feodo, cujusmodi custodias hucusque habuimus occasione feodi quod aliquis de nobis tenuit per servitium militare, et de abbatiis quae fundatae fuerint in feodo alterius quam nostro, in quibus dominus feodi dixerit se jus habere: et cum redierimus, vel si remanserimus a peregrinatione nostra, super hiis conquerentibus plenam justiciam statim exhibebimus.

54. Nullus capiatur nec imprisonetur propter appellum foeminae de morte alterius quam viri sui.

55. Omnes fines qui injuste et contra legem terrae facti sunt nobiscum, et omnia amerciamenta facta injuste et contra legem terrae, omnino condonentur, vel fiat inde per judicium vigiuti quinque baronum de quibus fit mentio inferius in securitate pacis, vel per judicium majoris partis eorumdem, una cum praedicto Stephano Cantuariensi archiepiscopo, si interesse poterit, et aliis quos secum ad hoc vocare voluerit; et si interesse non poterit, nihilominus procedat negotium sine eo, ita quod, si aliquis vel aliqui de praedictis viginti quinque baronibus fuerint in simili querela, amoveantur quantum ad hoc judicium, et alii loco illorum per residuos de eisdem viginti quinque, tantum ad hoc faciendum electi et jurati substituantur.

56. Si nos dissaisivimus vel elongavimus Walenses de terris vel libertatibus vel rebus aliis, sine legali judicio parium suorum, in Anglia vel in Wallia, eis statim reddantur; et si contentio super hoc orta fuerit, tunc inde fiat in marchia per judicium parium suorum, de tenementis Angliae secundum legem Angliae, de tenementis Walliae secundum legem Walliae, de tenementis marchiae secundum legem marchiae. Idem facient Walenses nobis et nostris.

57. De omnibus autem illis de quibus aliquis Walensium dissaisitus fuerit vel elongatus sine legali judicio parium suorum, per Henricum regem patrem nostrum vel Ricardum regem fratrem nostrum, quae nos in manu nostra habemus, vel quae alii tenent quae nos oporteat warantizare, respectum habebimus usque ad communem terminum crucesignatorum, illis exceptis de quibus placitum motum fuit vel inquisitio facta per praeceptum nostrum ante susceptionem crucis nostrae: cum autem redierimus, vel si forte remanserimus a peregrinatione nostra, statim eis inde plenam justiciam exhibebimus, secundem leges Walensium et partes praedictas.

58. Nos reddemus filium Lewelini tatim, et omnes obsides de Wallia, et cartas quae nobis liberatae fuerunt in securitatem pacis.

59. Nos faciemus Alexandro regi Scottorum de sororibus suis, et obsidibus reddendis, et libertatibus suis, et jure suo, secundum formam in qua faciemus aliis baronibus nostris Angliae, nisi aliter esse debeat per cartas quas habemus de Willelmo patre ipsius, quondam rege Scottorum: et hoc erit per judicium parium suorum in curia nostra.

60. Omnes autem istas consuetudines praedictas et libertates quas nos concessimus in regno nostro tenendas quantum ad nos pertinet erga nostros, omnes de regno nostro, tam clerici quam laici, observent quantum ad se pertinet erga suos.

61. Cum autem pro Deo, et ad emendationem regni nostri, et ad melius sopiendum discordiam inter nos et barones nostros ortam, haec omnia praedicta concesserimus, volentes ea integra et firma stabilitate gaudere in perpetuum, faciemus et concedimus eis securitatem subscriptam; videlicet quod barones eligant viginti quinque barones de regno quos voluerint, qui debeant pro totis viribus suis observare, tenere, et facere observari, pacem et libertates quas eis concessimus, et hac praesenti carta nostra confirmavimus, ita scilicet quod, si nos, vel justiciarius noster, vel ballivi nostri, vel aliquis de ministris nostris, in aliquo erga aliquem deliquerimus, vel aliquem articulorum pacis aut securitatis transgressi fuerimus, et delictum ostensum fuerit quatuor baronibus de praedictis viginti quinque baronibus, illi quatuor barones accedant ad nos vel ad justiciarium nostrum, si fuerimus extra regnum, proponentes nobis excessum: petent ut excessum illum sine dilatione faciamus emendari. Et si nos excessum non emendaverimus, vel, si fuerimus extra regnum, justiciarius noster non emendaverit infra tempus quadraginta dierum computandum a tempore quo monstratum fuerit nobis vel justiciario nostro si extra regnum fuerimus, praedicti quatuor barones referant causam illam ad residuos de viginti quinque baronibus, et illi viginti quinque barones cum communa totius terrae distringent et gravabunt nos modis omnibus quibus poterunt, scilicet per captionem castrorum, terrarum, possessionum, et aliis

modis quibus poterunt, donec fuerit emendatum secundum arbitrium eorum, salva persona nostra et reginae nostrae et liberorum nostrorum; et cum fuerit emendatum intendent nobis sicut prius fecerunt. Et quicumque voluerit de terra juret quod ad praedicta omnia exsequenda parebit mandatis praedictorum viginti quinque baronum, et quod gravabit nos pro posse suo cum ipsis, et nos publice et libere damus licentiam jurandi cuilibet qui jurare voluerit, et nulli umquam jurare prohibebimus. Omnes autem illos de terra qui per se et eponte sua nolnerint jurare viginti quinque baronibus, de distringendo et gravando nos cum eis, faciemus jurare eosdem de mandato nostro, sicut praedictum est. Et si aliquis de viginti quinque baronibus decesserit, vel a terra recesserit, vel aliquo alio modo impeditus fuerit, quo minus ista praedicta possent exsequi, qui residui fuerint de praedictis viginti quinque baronibus eligant alium loco ipsius, pro arbitrio suo, qui simili modo erit juratus quo et ceteri. In omnibus autem quae istis viginti quinque baronibus committuntur exsequenda, si forte ipsi viginti quinque praesentes fuerint, et inter se super re aliqua discordaverint, vel aliqui ex eis summoniti nolint vel nequeant interesse, ratum habeatur et firmum quod major pars eorum qui praesentes fuerint providerit, vel praeceperit, ac si omnes viginti quinque in hoc consensissent; et praedicti viginti quinque jurent quod omnia antedicta fideliter observabunt, et pro toto posse suo facient observari. Et nos nihil impetrabimus ab aliquo, per nos nec per alium, per quod aliqua istarum concessionum et libertatum revocetur vel minuatur; et, si aliquid tale impetratum fuerit, irritum sit et inane et numquam eo utemur per nos nec per alium.

62. Et omnes malas voluntates, indignationes, et rancores, ortos inter nos et homines nostros, clericos et laicos, a tempore discordiae, plene omnibus remisimus et condonavimus. Praeterea omnes transgressiones factas occasione ejusdem discordiae, a Pascha anno regni nostri sextodecimo usque ad pacem reformatam, plene remisimus omnibus, clericis et laicis, et quantum ad nos pertinet plene condonavimus. Et insuper fecimus eis fieri litteras testimoniales patentes domini Stephani Cantuariensis archiepiscopi, domini Henrici Dublinensis archiepiscopi, et episcoporum praedictorum, et magistri Pandulfi, super securitate ista et concessionibus praefatis.

63. Quare volumus et firmiter praecipimus quod Anglicana ecclesia libera sit et quod homines in regno nostro habeant et teneant omnes praefatas libertates, jura, et concessiones, bene et in pace, libere et quiete, plene et integre, sibi et haeredibus suis, de nobis et haeredibus nostris, in omnibus rebus et locis, in perpetuum, sicut praedictum est. Juratum est autem tam ex parte nostra quam ex parte baronum; quod haec omnia supradicta bona fide et sine malo ingenio observabuntur. Testibus supradictis et multis aliis. Data per manum nostram in prato quod vocatur Runingmede, inter Windelesorum et Stanes, quinto decimo die Junii, anno regni nostri septimo decimo.

V. CONFIRMATION OF THE CHARTERS.

(*Translation.*)

I. Edward, by the grace of God, King of England, Lord of Ireland, and Duke of Guyan, to all those that these present letters shall hear or see, greeting. Know ye that we to the honor of God and of holy Church, and to the profit of our realm, have granted for us and our heirs, that the Charter of Liberties and the Charter of the Forest, which were made by common assent of all the realm, in the time of King Henry our father, shall be kept in every point without breach. And we will that the same charters shall be sent under our seal as well to our justices of the forest as to others, and to all sheriffs of shires, and to all our other officers, and to all our cities throughout the realm, together with our writs in the which it shall be contained, that they cause the foresaid charters to be published, and to declare to the people that we have confirmed them in all points, and that our justices, sheriffs, mayors, and other ministers which under us have the laws of our land to guide, shall allow the said charters pleaded before them in judgment in all their points; that is, to wit, the Great Charter as the common law and the Charter of the Forest according to the Assize of the Forest, for the wealth of our realm.

II. And we will that if any judgment be given from henceforth, contrary to the points of the charters aforesaid, by the justices or by any other our ministers that hold plea before them against the points of the charters, it shall be undone and holden for nought.

III. And we will that the same charters shall be sent under our seal to cathedral churches throughout our realm, there to remain, and shall be read before the people two times by the year.

IV. And that all archbishops and bishops shall pronounce the sentence of great excommunication against all those that by word, or deed, or counsel do contrary to

the foresaid charters, or that in any point break or undo them. And that the said curses be twice a year denounced and published by the prelates aforesaid. And if the same prelates or any of them be remiss in the denunciation of the said sentences, the Archbishops of Canterbury and York for the time being, as is fitting, shall compel and distrain them to make that denunciation in form aforesaid.

V. And for so much as divers people of our realm are in fear that the aids and tasks which they have given to us beforetime towards our wars and other business, of their own grant and good-will, howsoever they were made, might turn to a bondage to them and their heirs, because they might be at another time found in the rolls, and so likewise the prizes taken throughout the realm by our ministers; we have granted for us and our heirs, that we shall not draw such aids, tasks, nor prizes into a custom, for any thing that hath been done heretofore or that may be found by roll or in any other manner.

VI. Moreover, we have granted for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy Church, as also to earls, barons, and to all the commonalty of the land, that for no business from henceforth will we take such manner of aids, tasks, nor prizes, but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prizes due and accustomed.

VII. And for so much as the more part of the commonalty of the realm find themselves sore grieved with the maletote of wools; that is, to wit, a toll of forty shillings for every sack of wool, and have made petition to us to release the same; we, at their requests, have clearly released it, and have granted for us and our heirs that we shall not take such thing nor any other without their common assent and good-will; saving to us and our heirs the custom of wools, skins, and leather granted before by the commonalty aforesaid. In witness of which things we have caused these our letters to be made patent. Witness Edward our son at London, the 10th day of October, the five and twentieth year of our reign.

And be it remembered that this same charter in the same terms, word for word, was sealed in Flanders under the king's great seal, that is to say, at Ghent, the 5th day of November, in the 25th year of the reign of our aforesaid lord the king, and sent into England. — ("Statutes of the Realm," i., 124, 125.)

VI. SUMMONS TO THE PARLIAMENT OF 1295.

Item mandatum est singulis vicecomitibus per Angliam quod venire faciant duos milites de legalioribus, probioribus et discretioribus militibus singulorum comitatuum ad regem Londoniis in octavis praedictis in forma supradicta.

Item in forma praedicta scribitur civibus Eboraci, civibus Lincolniae, et ceteris burgis Angliae, quod mittant in forma praedicta duos de discretioribus, legalioribus et probioribus tam civibus quam burgensibus.

Item in forma praedicta mandatum est baronibus et probis hominibus Quinque Portuum. . . . —("Report on the Dignity of a Peer," App. i., p. 33.)

CHAPTER IX.

ON THE STATE OF SOCIETY IN EUROPE DURING THE MIDDLE AGES.

PART I.

§ 1. Introduction. § 2. Decline of Literature in the latter period of the Roman Empire. § 3. Its Causes. § 4. Corruption of the Latin Language: Means by which it was effected. § 5. Formation of new Languages. § 6. General Ignorance of the Dark Ages. § 7. Causes that prevented the total Extinction of Learning. § 8. Prevalence of Superstition and Fanaticism. § 9. Enthusiastic Risings. § 10. Pretended Miracles. § 11. General Corruption of Religion. § 12. Monasteries: their effects. § 13. Penances, Pilgrimages. § 14. Want of Law, and Degradation of Morals. § 15. Love of Field Sports. § 16. State of Agriculture. § 17. Of Internal and Foreign Trade down to the End of the Eleventh Century. § 18. Improvement of Europe dated from that Age.

§ 1. THE Middle Ages, according to the division I have adopted, comprise about one thousand years, from the invasion of France by Clovis to that of Naples by Charles VIII. This period, considered as to the state of society, has been esteemed dark through ignorance, and barbarous through poverty and want of refinement. And although this character is much less applicable to the last two centuries of the period than to those which preceded its commencement, yet we can not expect to feel, in respect of ages at best imperfectly civilized and slowly progressive, that interest which attends a more perfect development of human capacities, and more brilliant advances in improvement. The first moiety, indeed, of these ten ages is almost absolutely barren, and presents little but a catalogue of evils. The subversion of the Roman Empire and devastation of its provinces by barbarous nations, either immediately preceded, or were coincident with, the commencement of the middle period. We begin in darkness and calamity; and though the shadows grow fainter as we advance, yet we are to break off our pursuit as the morning breathes upon us and the twilight reddens into the lustre of day.

§ 2. No circumstance is so prominent, on the first survey of society during the earlier centuries of this period, as the depth of ignorance in which it was immersed; and as from this, more than any single cause, the moral and social evils which those ages experienced appear to have been derived

and perpetuated, it deserves to occupy the first place in the arrangement of our present subject. We must not altogether ascribe the ruin of literature to the barbarian destroyers of the Roman Empire. So gradual and, apparently, so irretrievable a decay had long before spread over all liberal studies, that it is impossible to pronounce whether they would not have been almost equally extinguished if the august throne of the Cæsars had been left to moulder by its intrinsic weakness. Under the paternal sovereignty of Marcus Aurelius the approaching declension of learning might be scarcely perceptible to an incurious observer. There was much, indeed, to distinguish his times from those of Augustus; much lost in originality of genius, in correctness of taste, in the masterly conception and consummate finish of art, in purity of the Latin, and even of the Greek language. But there were men who made the age famous—grave lawyers, judicious historians, wise philosophers; the name of learning was honorable, its professors were encouraged; and along the vast surface of the Roman Empire there was perhaps a greater number whose minds were cultivated by intellectual discipline than under the more brilliant reign of the first emperor.

§ 3. It is not, I think, very easy to give a perfectly satisfactory solution of the rapid downfall of literature between the ages of Antonine and of Diocletian. Perhaps the prosperous condition of the empire from Trajan to Marcus Aurelius, and the patronage which those good princes bestowed on letters, gave an artificial health to them for a moment, and suspended the operation of a disease which had already begun to undermine their vigor. Perhaps the intellectual energies of mankind can never remain stationary; and a nation that ceases to produce original and inventive minds, born to advance the landmarks of knowledge or skill, will recede from step to step, till it loses even the secondary merits of imitation and industry. During the third century, not only there were no great writers, but even few names of indifferent writers have been recovered by the diligence of modern inquiry. Law neglected, philosophy perverted till it became contemptible, history nearly silent, the Latin tongue growing rapidly barbarous, poetry rarely and feebly attempted, art more and more vitiated; such were the symptoms by which the age previous to Constantine announced the decline of human intellect. If we can not fully account for this unhappy change, as I have observed, we must, however, assign much weight to the degradation of Rome and Italy in the

system of Severus and his successors, to the admission of barbarians into the military and even civil dignities of the empire, to the discouraging influence of provincial and illiterate sovereigns, and to the calamities which followed for half a century the first invasion of the Goths and the defeat of Decius. To this sickly condition of literature the fourth century supplied no permanent remedy. If under the house of Constantine the Roman world suffered rather less from civil warfare or barbarous invasions than in the preceding age, yet every other cause of decline just enumerated prevailed with aggravated force; and the fourth century set in storms, sufficiently destructive in themselves, and ominous of those calamities which humbled the majesty of Rome at the commencement of the ensuing period, and overwhelmed the Western Empire in absolute and final ruin before its termination.

The diffusion of literature is perfectly distinguishable from its advancement; and whatever the obscurity we may find in explaining the variations of the one, there are a few simple causes which seem to account for the other. Knowledge will be spread over the surface of a nation in proportion to the facilities of education; to the free circulation of books; to the emoluments and distinctions which literary attainments are found to produce; and still more to the reward which they meet in the general respect and applause of society. This cheering incitement, the genial sunshine of approbation, has at all times promoted the cultivation of literature in small republics rather than large empires, and in cities compared with the country. If these are the sources which nourish literature, we should naturally expect that they must have become scanty or dry when learning languishes or expires. Accordingly, in the later ages of the Roman Empire a general indifference towards the cultivation of letters became the characteristic of its inhabitants. Laws were, indeed, enacted by Constantine, Julian, Theodosius, and other emperors, for the encouragement of learned men and the promotion of liberal education. But these laws, which would not, perhaps, have been thought necessary in better times, were unavailing to counteract the lethargy of ignorance in which even the native citizens of the empire were contented to repose. This alienation of men from their national literature may doubtless be imputed in some measure to its own demerits. A jargon of mystical philosophy, half fanaticism and half imposture, a barren and inflated eloquence, a frivolous philology, were not among those charms of wisdom by

which man is to be diverted from pleasure or aroused from indolence.

In this temper of the public mind there was little probability that new compositions of excellence would be produced, and much doubt whether the old would be preserved. Since the invention of printing, the absolute extinction of any considerable work seems a danger too improbable for apprehension. The press pours forth in a few days a thousand volumes, which, scattered like seeds in the air over the republic of Europe, could hardly be destroyed without the extirpation of its inhabitants. But in the times of antiquity manuscripts were copied with cost, labor, and delay; and if the diffusion of knowledge be measured by the multiplication of books—no unfair standard—the most golden ages of ancient learning could never bear the least comparison with the three last centuries. The destruction of a few libraries by accidental fire, the desolation of a few provinces by unsparing and illiterate barbarians, might annihilate every vestige of an author, or leave a few scattered copies, which, from the public indifference, there was no inducement to multiply, exposed to similar casualties in succeeding times.

We are warranted by good authorities to assign as a collateral cause of this irretrievable revolution the neglect of heathen literature by the Christian Church. I am not versed enough in ecclesiastical writers to estimate the degree of this neglect; nor am I disposed to deny that the mischief was beyond recovery before the accession of Constantine. From the primitive ages, however, it seems that a dislike of pagan learning was pretty general among Christians. Many of the fathers undoubtedly were accomplished in liberal studies, and we are indebted to them for valuable fragments of authors whom we have lost. But the literary character of the Church is not to be measured by that of its more illustrious leaders. Proscribed and persecuted, the early Christians had not, perhaps, access to the public schools, nor inclination to studies which seemed, very excusably, uncongenial to the character of their profession. Their prejudices, however, survived the establishment of Christianity. The Fourth Council of Carthage, in 398, prohibited the reading of secular books by bishops. Jerome plainly condemns the study of them except for pious ends. All physical science especially was held in avowed contempt, as inconsistent with revealed truths. Nor do there appear to have been any canons made in favor of learning, or any restriction on the ordination of persons absolutely illiterate. There was, indeed, abundance

of what is called theological learning displayed in the controversies of the fourth and fifth centuries; and those who admire such disputations may consider the principal champions in them as contributing to the glory, or, at least, retarding the decline, of literature. But I believe rather that polemical disputes will be found not only to corrupt the genuine spirit of religion, but to degrade and contract the faculties. What keenness and subtlety these may sometimes acquire by such exercise is more like that worldly shrewdness we see in men whose trade it is to outwit their neighbors than the clear and calm discrimination of philosophy. However this may be, it can not be doubted that the controversies agitated in the Church during these two centuries must have diverted studious minds from profane literature, and narrowed more and more the circle of that knowledge which they were desirous to attain.

The torrent of irrational superstitions which carried all before it in the fifth century, and the progress of ascetic enthusiasm, had an influence still more decidedly inimical to learning. I can not, indeed, conceive any state of society more adverse to the intellectual improvement of mankind than one which admitted of no middle line between gross dissoluteness and fanatical mortification. An equable tone of public morals, social and humane, verging neither to voluptuousness nor austerity, seems the most adapted to genius, or at least to letters, as it is to individual comfort and national prosperity. After the introduction of monkery, and its unsocial theory of duties, the serious and reflecting part of mankind, on whom science most relies, were turned to habits which, in the most favorable view, could not quicken the intellectual energies; and it might be a difficult question whether the cultivators and admirers of useful literature were less likely to be found among the profligate citizens of Rome and their barbarian conquerors, or the melancholy recluses of the wilderness.

Such, therefore, was the state of learning before the subversion of the Western Empire. And we may form some notion how little probability there was of its producing any excellent fruits, even if that revolution had never occurred, by considering what took place in Greece during the subsequent ages; where, although there was some attention shown to preserve the best monuments of antiquity, and diligence in compiling from them, yet no one original writer of any superior merit arose, and learning, though plunged but for a short period into mere darkness, may be said to have languish-

ed in the middle region of twilight for the greater part of a thousand years.

But not to delay ourselves in this speculation, the final settlement of barbarous nations in Gaul, Spain, and Italy consummated the ruin of literature. Their first irruptions were uniformly attended with devastation; and if some of the Gothic kings, after their establishment, proved humane and civilized sovereigns, yet the nation gloried in its original rudeness, and viewed with no unreasonable disdain arts which had neither preserved their cultivators from corruption nor raised them from servitude. Theodoric, the most famous of the Ostrogoth kings in Italy, could not write his name, and is said to have restrained his countrymen from attending those schools of learning by which he, or rather perhaps his minister, Cassiodorus, endeavored to revive the studies of his Italian subjects. Scarcely one of the barbarians, so long as they continued unconfused with the native inhabitants, acquired the slightest tincture of letters; and the praise of equal ignorance was soon aspired to and attained by the entire mass of the Roman laity. They, however, could hardly have divested themselves so completely of all acquaintance with even the elements of learning, if the language in which books were written had not ceased to be their natural dialect. This remarkable change in the speech of France, Spain, and Italy, is most intimately connected with the extinction of learning; and there is enough of obscurity as well as of interest in the subject to deserve some discussion.

§ 4. It is obvious, on the most cursory view of the French and Spanish languages, that they, as well as the Italian, are derived from one common source, the Latin. That must, therefore, have been at some period, and certainly not since the establishment of the barbarous nations in Spain and Gaul, substituted in ordinary use for the original dialects of those countries which are generally supposed to have been Celtic, not essentially differing from those which are spoken in Wales and Ireland. Rome, says Augustin, imposed not only her yoke, but her language, upon conquered nations. The success of such an attempt is indeed very remarkable. Though it is the natural effect of conquest, or even of commercial intercourse, to ingraft fresh words and foreign idioms on the stock of the original language, yet the entire disuse of the latter, and adoption of one radically different, scarcely takes place in the lapse of a far longer period than that of the Roman dominion in Gaul. Thus, in part of Brittany the people speak a language which has perhaps sustained no es-

sential alteration from the revolution of two thousand years; and we know how steadily another Celtic dialect has kept its ground in Wales, notwithstanding English laws and government, and the long line of contiguous frontier which brings the natives of that principality into contact with Englishmen. Nor did the Romans ever establish their language (I know not whether they wished to do so) in this island, as we perceive by that stubborn British tongue which has survived two conquests.

In Gaul and in Spain, however, they did succeed, as the present state of the French and Peninsular languages renders undeniable, though by gradual changes, and not by a sudden and arbitrary innovation. This is neither possible in itself, nor agreeable to the testimony of Irenæus, bishop of Lyons at the end of the second century, who laments the necessity of learning Celtic. But although the inhabitants of these provinces came at length to make use of Latin so completely as their mother tongue that few vestiges of their original Celtic could perhaps be discovered in their common speech, it does not follow that they spoke with the pure pronunciation of Italians, far less with that conformity to the written sounds which we assume to be essential to the expression of Latin words.

It appears to be taken for granted that the Romans pronounced their language as we do at present, so far at least as the enunciation of all the consonants, however we may admit our deviations from the classical standard in propriety of sounds and in measure of time. Yet the example of our own language and of French might show us that orthography may become a very inadequate representative of pronunciation. It is, indeed, capable of proof that in the purest ages of Latinity some variation existed between these two. Those numerous changes in spelling which distinguish the same words in the poetry of Ennius and of Virgil are best explained by the supposition of their being accommodated to the current pronunciation. Harsh combinations of letters, softened down through delicacy of ear or rapidity of utterance, gradually lost their place in the written language. Thus *exfregit* and *adrogavit* assumed a form representing their more liquid sound; and *auctor* was latterly spelt *autor*, which has been followed in French and Italian. *Autor* was probably so pronounced at all times; and the orthography was afterwards corrected or corrupted, whichever we please to say, according to the sound. We have the best authority to assert that the final *m* was very faintly pronounced, rather,

it seems, as a rest and short interval between two syllables than an articulate letter; nor, indeed, can we conceive upon what other ground it was subject to elision before a vowal in verse, since we can not suppose that the nice ears of Rome would have submitted to a capricious rule of poetry for which Greece presented no analogy.[1]

A decisive proof, in my opinion, of the deviation which took place, through the rapidity of ordinary elocution, from the strict laws of enunciation, may be found in the metre of Terence. His verses, which are absolutely refractory to the common laws of prosody, may be readily scanned by the application of this principle.[2]

The licenses mentioned in the note below are in all probability chiefly colloquial, and would not have been adopted in public harangues, to which the precepts of rhetorical writers commonly relate. But if the more elegant language of the Romans, since such we must suppose to have been copied by Terence for his higher characters, differed so much in ordinary discourse from their orthography, it is probable that the vulgar went into much greater deviations. The popular pronunciation errs generally, we might say perhaps invariably, by abbreviation of words, and by liquefying consonants, as is natural to the rapidity of colloquial speech.[3] It is by their knowledge of orthography and etymology that the

[1] Atque eadem illa litera, quoties ultima est, et vocalem verbi sequentis ita contingit, ut in eam transire possit, etiam si scribitur, tamen parum exprimitur, ut *Multum ille*, et *Quantum erat:* adeo ut pene cujusdam novæ literæ sonum reddat. Neque enim eximitur, sed obscuratur, et tantùm aliqua inter duos vocales venit nota est, ne ipsæ coeant.—Quintilian, Institut., l. ix., c. 4, p. 585, edit. Capperonier.

[2] Thus, in the first act of the "Heautontimorumenos," a part selected at random, I have found, I. Vowels contracted or dropped so as to shorten the word by a syllable; in *rei, vid, diutius, ei, solius, eam, unius, suam, divitiæ, senex, voluptatem, illius, semel:* II. The proceleusmatic foot, or four short syllables, instead of the dactyl; scen. i., v. 59, 73, 76, 88, 109; scen. ii., v. 36: III. The elision of *s* in words ending with *us* or *is* short, and sometimes even of the whole syllable, before the next word beginning with a vowel; in scen. i., v. 80, 81, 98, 101, 116, 119; scen. ii., v. 28: IV. The first syllable of *ille* is repeatedly shortened, and indeed nothing is more usual in Terence than this license; whence we may collect how ready this word was for abbreviation into the French and Italian articles: V. The last letter of *apud* is cut off, scen. i., v. 120; and scen. ii., v. 8: VI. *Hodie* is used as a pyrrhichius, in scen. ii., v. 11: VII. Lastly, there is a clear instance of a short syllable, the antepenultimate of *impulerim*, lengthened on account of the accent at the 113th verse of the first scene.

[3] The following passage of Quintilian is an evidence both of the omission of harsh or superfluous letters by the best speakers, and of the corrupt abbreviations usual with the worst. "Dilucida vero erit pronunciatio primum, si verba tota exegerit, quorum pars devorari, pars destitui solet, plerisque extremas syllabas non proferentibus, dum priorum sono indulgent. Ut est autem necessaria verborum explanatio, ita omnes computare et velut adnumerare literas, molestum et odiosum. Nam et vocales frequentissimè coeunt, et consonantium quædam insequente vocali dissimulantur; utriusque exemplum ponimus: Multum ille et terris. Vitatur etiam durlorum inter se congressus, unde *pulcrit* et *collegit*, ut quæ alio loco dicta sunt."—L. ii., c. 3, p. 696.

more educated part of the community is preserved from these corrupt modes of pronunciation. There is always, therefore, a standard by which common speech may be rectified, and in proportion to the diffusion of knowedge and politeness the deviations from it will be more slight and gradual. But in distant provinces, and especially where the language itself is but of recent introduction, many more changes may be expected to occur. Even in France and England there are provincial dialects which, if written with all their anomalies of pronunciation as well as idiom, would seem strangely out of unison with the regular language; and in Italy, as is well known, the varieties of dialect are still more striking. Now, in an advancing state of society, and especially with such a vigorous political circulation as we experience in England, language will constantly approximate to uniformity, as provincial expressions are more and more rejected for incorrectness or inelegance. But where literature is on the decline, and public misfortunes contract the circle of those who are solicitous about refinement, as in the last ages of the Roman Empire, there will be no longer any definite standard of living speech, nor any general desire to conform to it if one could be found; and thus the vicious corruptions of the vulgar will entirely predominate. The niceties of ancient idiom will be totally lost, while new idioms will be formed out of violations of grammar sanctioned by usage, which, among a civilized people, would have been proscribed at their appearance.

Such appears to have been the progress of corruption in the Latin language. The adoption of words from the Teutonic dialects of the barbarians, which took place very freely, would not of itself have destroyed the character of that language, though it sullied its purity. The worst law Latin of the Middle Ages is still Latin, if its barbarous terms have been bent to the regular inflections. It is possible, on the other hand, to write whole pages of Italian wherein every word shall be of unequivocal Latin derivation, though the character and personality, if I may so say, of the language be entirely dissimilar. But, as I conceive, the loss of literature took away the only check upon arbitrary pronunciation and upon erroneous grammar. Each people innovated through caprice, imitation of their neighbors, or some of those indescribable causes which dispose the organs of different nations to different sounds. The French melted down the middle consonants, the Italians omitted the final. Corruptions arising out of ignorance were mingled with those

of pronunciation. It would have been marvellous if illiterate and semi-barbarous provincials had preserved that delicate precision in using the inflections of tenses which our best scholars do not clearly attain. The common speech of any people whose language is highly complicated will be full of solecisms. The French inflections are not comparable in number or delicacy to the Latin, and yet the vulgar confuse their most ordinary forms.

But, in all probability, the variation of these derivative languages from popular Latin has been considerably less than it appears. In the purest ages of Latinity the citizens of Rome itself made use of many terms which we deem barbarous, and of many idioms which we should reject as modern. That highly complicated grammar which the best writers employed was too elliptical and obscure, too deficient in the connecting parts of speech, for general use. We can not, indeed, ascertain in what degree the vulgar Latin differed from that of Cicero or Seneca. It would be highly absurd to imagine, as some are said to have done, that modern Italian was spoken at Rome under Augustus. But I believe it may be asserted not only that much the greater part of those words in the present language of Italy which strike us as incapable of a Latin etymology are in fact derived from those current in the Augustan age, but that very many phrases which offended nicer ears prevailed in the same vernacular speech, and have passed from thence into the modern French and Italian. Such, for example, was the frequent use of prepositions to indicate a relation between two parts of a sentence which a classical writer would have made to depend on mere inflection.[4]

From the difficulty of retaining a right discrimination of tense seems to have proceeded the active auxiliary verb. It is possible that this was borrowed from the Teutonic languages of the barbarians, and accommodated both by them and by the natives to words of Latin origin. The passive auxiliary is obtained by a very ready resolution of any tense in that mood, and has not been altogether dispensed with even in Greek, while in Latin it is used much more frequently. It is not quite so easy to perceive the propriety of the active *habeo* or *teneo*, one or both of which all modern lan-

[4] M. Bonamy, in an essay printed in Mém. de l'Académie des Inscriptions, t. xxiv., has produced several proofs of this from the classical writers on agriculture and other arts, though some of his instances are not in point, as any school-boy would have told him. This essay contains the best view that I have seen of the process of transition by which Latin was changed into French and Italian. Add, however, the preface to Tiraboschi's third volume and the thirty-second dissertation of Muratori.

guages have adopted as their auxiliaries in conjugating the verb. But in some instances this analysis is not improper; and it may be supposed that nations careless of etymology or correctness applied the same verb by rude analogy to cases where it ought not strictly to have been employed.

Next to the changes founded on pronunciation and to the substitution of auxiliary verbs for inflections, the usage of the definite and indefinite articles in nouns appears the most considerable step in the transmutation of Latin into its derivative languages. None but Latin, I believe, has ever wanted this part of speech; and the defect to which custom reconciled the Romans would be an insuperable stumbling-block to nations who were to translate their original idiom into that language. A coarse expedient of applying *unus*, *ipse*, or *ille* to the purposes of an article might perhaps be no infrequent vulgarism of the provincials; and after the Teutonic tribes brought in their own grammar, it was natural that a corruption should become universal, which in fact supplied a real and essential deficiency.

That the quantity of Latin syllables is neglected, or rather lost, in modern pronunciation, seems to be generally admitted. Whether, indeed, the ancient Romans, in their ordinary speaking, distinguished the measure of syllables with such uniform musical accuracy as we imagine, giving a certain time to those termed long, and exactly half that duration to the short, might very reasonably be questioned; though this was probably done, or attempted to be done, by every reader of poetry. Certainly, however, the laws of quantity were forgotten, and an accentual pronunciation came to predominate, before Latin had ceased to be a living language. A Christian writer named Commodianus, who lived before the end of the third century according to some, or, as others think, in the reign of Constantine, has left us a philological curiosity, in a series of attacks on the pagan superstitions,[s] composed in what are meant to be verses regu-

[s] No description can give so adequate a notion of this extraordinary performance as a short specimen. Take the introductory lines, which really, prejudices of education apart, are by no means inharmonious:

Præfatio nostra viam erranti demonstrat,
Respectumque bonum, cum venerit sæculi meta,
Æternum fieri, quod discredunt inscia corda.
Ego similiter erravi tempore multo,
Fana prosequendo, parentibus inscius ipse.
Abstuli me tandem inde, legendo de lege.
Testificor Dominum, doleo, proh! civica turba
Inscia quod perdit, pergens deos quærere vanos.
Ob ea perdoctus ignoros instruo verum.

Commodianus is published by Dawes at the end of his edition of Minucius Felix. Some specimens are quoted in Harris's Philological Inquiries.

lated by accent instead of quantity, exactly as we read Virgil at present.

It is not improbable that Commodianus may have written in Africa, the province in which more than any the purity of Latin was debased. At the end of the fourth century St. Augustin assailed his old enemies, the Donatists, with nearly the same arms that Commodianus had wielded against heathenism. But as the refined and various music of hexameters was unlikely to be relished by the vulgar, he prudently adopted a different measure.[6] All the nations of Europe seem to love the trochaic verse. It was frequent on the Greek and Roman stage; it is more common than any other in the popular poetry of modern languages. This proceeds from its simplicity, its liveliness, and its ready accommodation to dancing and music. In St. Augustin's poem he united to a trochaic measure the novel attraction of rhyme.

As Africa must have lost all regard to the rules of measure in the fourth century, so it appears that Gaul was not more correct in the next two ages. A poem addressed by Auspicius, bishop of Toul, to Count Arbogastes, of earlier date probably than the invasion of Clovis, is written with no regard to quantity.[7] The bishop by whom this was composed is mentioned by his contemporaries as a man of learning. Probably he did not choose to perplex the barbarian to whom he was writing (for Arbogastes is plainly a barbarous name) by legitimate Roman metre. In the next century Gregory of Tours informs us that Chilperic attempted to write Latin verses; but the lines could not be reconciled to any division of feet, his ignorance having confounded long and short syllables together. Now Chilperic must have learned to speak Latin like other kings of the Franks, and was a smatterer in several kinds of literature. If Chilperic, therefore, were not master of these distinctions, we

[6] Archæologia, vol. xiv., p. 188. The following are the first lines:

Abundantia peccatorum solet fratres conturbare;
Propter hoc Dominus noster voluit nos prænonere,
Comparans regnum cœlorum reticulo misso in mare,
Congreganti multos pisces, omne genus hinc et inde,
Quos cum traxissent ad littus, tunc cœperunt separare,
Bonos in vasa miserunt, reliquos malos in mare.

This trash is much below the level of Augustin; but it could not have been later than his age.

[7] Recueil des Historiens, t. i., p. 814; it begins in the following manner:

Præcelso expectabili bis Arbogasto comiti
Auspicius, qui diligo, salutem dico plurimam.
Magnas cœlesti Domino rependo corde gratias
Quod te Tullensi proxime magnum in urbe vidimus.
Multis me tuis artibus lætificabas antea,
Sed nunc fecisti maximo me exultare gaudio.

may conclude that the bishops and other Romans with whom he conversed did not observe them; and that his blunders in versification arose from ignorance of rules which, however fit to be preserved in poetry, were entirely obsolete in the living Latin of his age. Indeed, the frequency of false quantities in the poets even of the fifth, but much more of the sixth century, is palpable. Fortunatus is quite full of them. This seems a decisive proof that the ancient pronunciation was lost. Avitus tells us that few preserved the proper measure of syllables in singing. Yet he was Bishop of Vienne, where a purer pronunciation might be expected than in the remoter parts of Gaul.

§ 5. Defective, however, as it had become in respect of pronunciation, Latin was still spoken in France during the sixth and seventh centuries. We have compositions of that time, intended for the people, in grammatical language. A song is still extant in rhyme and loose accentual measure, written upon a victory of Clotaire II. over the Saxons in 622, and obviously intended for circulation among the people. Fortunatus says, in his life of St. Aubin of Angers, that he should take care not to use any expression unintelligible to the people. Baudemind, in the middle of the seventh century, declares, in his life of St. Amand, that he writes in a rustic and vulgar style, that the reader may be excited to imitation. Not that these legends were actually perused by the populace, for the very art of reading was confined to a few. But they were read publicly in the churches, and probably with a pronunciation accommodated to the corruptions of ordinary language. Still, the Latin syntax must have been tolerably understood; and we may therefore say that Latin had not ceased to be a living language, in Gaul at least, before the latter part of the seventh century. Faults, indeed, against the rules of grammar, as well as unusual idioms, perpetually occur in the best writers of the Merovingian period, such as Gregory of Tours; while charters drawn up by less expert scholars deviate much farther from purity.

The corrupt provincial idiom became gradually more and more dissimilar to grammatical Latin; and the lingua Romana rustica, as the vulgar *patois* (to borrow a word that I can not well translate) had been called, acquired a distinct character as a new language in the eighth century. Latin orthography, which had been hitherto pretty well maintained in books, though not always in charters, gave way to a new spelling, conformably to the current pronunciation. Thus we

find *lui* for *illius*, in the Formularies of Marculfus; and *Tu lo juva* in a liturgy of Charlemagne's age, for *Tu illum juva*. When this barrier was once broken down, such a deluge of innovation poured in, that all the characteristics of Latin were effaced in writing as well as speaking, and the existence of a new language became undeniable. In a council held at Tours in 813, the bishops are ordered to have certain homilies of the fathers translated into the rustic Roman, as well as the German tongue. After this it is unnecessary to multiply proofs of the change which Latin had undergone.

In Italy the progressive corruptions of the Latin language were analogous to those which occurred in France, though we do not find in writings any unequivocal specimens of a new formation at so early a period. But the old inscriptions, even of the fourth and fifth centuries, are full of solecisms and corrupt orthography. In legal instruments under the Lombard kings the Latin inflections are indeed used, but with so little regard to propriety that it is obvious the writers had not the slightest tincture of grammatical knowledge. This observation extends to a very large proportion of such documents down to the twelfth century, and is as applicable to France and Spain as it is to Italy. In these charters the peculiar characteristics of Italian orthography and grammar frequently appear. Thus we find, in the eighth century, *diveatis* for *debeatis*, *da* for *de* in the ablative, *avendi* for *habendi*, *dava* for *dabat*, *cedo a deo*, and *ad ecclesia*, among many similar corruptions. Latin was so changed, it is said by a writer of Charlemagne's age, that scarcely any part of it was popularly known. Italy, indeed, had suffered more than France itself by invasion, and was reduced to a lower state of barbarism, though probably, from the greater distinctness of pronunciation habitual to the Italians, they lost less of their original language than the French. I do not find, however, in the writers who have treated this subject, any express evidence of a vulgar language distinct from Latin earlier than the close of the tenth century, when it is said in the epitaph of Pope Gregory V. (who died in 999), that he instructed the people in three dialects—the Frankish, or German, the vulgar, and the Latin.[6]

§ 6. When Latin had thus ceased to be a living language, the whole treasury of knowledge was locked up from the eyes of the people. The few who might have imbibed a taste for literature, if books had been accessible to them, were reduced

[6] Usus Francisca, vulgari, et voce Latin
Instituit populos eloquio tripici.

to abandon pursuits that could only be cultivated through a kind of education not easily within their reach. Schools, confined to cathedrals and monasteries, and exclusively designed for the purposes of religion, afforded no encouragement or opportunities to the laity. The worst effect was, that, as the newly-formed languages were hardly made use of in writing, Latin being still preserved in all legal instruments and public correspondence, the very use of letters, as well as of books, was forgotten. For many centuries, to sum up the account of ignorance in a word, it was rare for a layman, of whatever rank, to know how to sign his name! Their charters, till the use of seals became general, were subscribed with the mark of the cross. Still more extraordinary it was to find one who had any tincture of learning. Even admitting every indistinct commendation of a monkish biographer (with whom a knowledge of church music would pass for literature), we could make out a very short list of scholars. None, certainly, were more distinguished as such than Charlemagne and Alfred; but the former, unless we reject a very plain testimony, was incapable of writing;[9] and Alfred found difficulty in making a translation from the pastoral instruction of St. Gregory, on account of his imperfect knowledge of Latin.

Whatever mention, therefore, we find of learning and the learned during these dark ages, must be understood to relate only to such as were within the pale of clergy, which, indeed, was pretty extensive, and comprehended many who did not exercise the offices of religious ministry. But even the clergy were, for a long period, not very materially superior, as a body, to the uninstructed laity. A cloud of ignorance over-

[9] The passage in Eginhard, which has occasioned so much dispute, speaks for itself: Tentabat et scribere, tabulasque et codicillos ad hoc in lecticula sub cervicalibus circumferre solebat, ut, cum vacuum tempus esset, manum effigiandis literis assuefaceret; sed parum prosperè successit labor præposterus ac serò inchoatus.

Many are still unwilling to believe that Charlemagne could not write. M. Ampère observes that the emperor asserts himself to have been the author of the Libri Carolini, and is said by some to have composed verses. Hist. Litt. de la France, iii., 37. But did not Henry VIII. claim a book against Luther, which was not written by himself? *Qui facit per alium, facit per se*, is in all cases a royal prerogative. Even if the book were Charlemagne's own, might he not have dictated it? I have been informed that there is a manuscript at Vienna with autograph notes of Charlemagne in the margin. But is there sufficient evidence of their genuineness? The great difficulty is to get over the words which I have quoted from Eginhard. M. Ampère ingeniously conjectures that the passage does not relate to simple common writing, but to calligraphy—the art of delineating characters in a beautiful manner, practised by the copyists, and of which a contemporaneous specimen may be seen in the well-known Bible of the British Museum. Yet it must be remembered that Charlemagne's early life passed in the depths of ignorance; and Eginhard gives a fair reason why he failed in acquiring the art of writing, that he began too late. Fingers of fifty are not made for a new skill. It is not, of course, implied by the words that he could not write his own name; but that he did not acquire such a facility as he desired.

spread the whole face of the Church, hardly broken by a few glimmering lights, who owe much of their distinction to the surrounding darkness. In the sixth century the best writers in Latin were scarcely read; and perhaps from the middle of this age to the eleventh there was, in a general view of literature, little difference to be discerned. If we look more accurately, there will appear certain gradual shades of twilight on each side of the greatest obscurity. France reached her lowest point about the beginning of the eighth century; but England was at that time more respectable, and did not fall into complete degradation till the middle of the ninth. There could be nothing more deplorable than the state of letters in Italy and in England during the succeeding century; but France can not be denied to have been uniformly, though very slowly, progressive from the time of Charlemagne.

Of this prevailing ignorance it is easy to produce abundant testimony. Contracts were made verbally, for want of notaries capable of drawing up charters; and these, when written, were frequently barbarous and ungrammatical to an incredible degree. For some considerable intervals scarcely any monument of literature has been preserved, except a few jejune chronicles, the vilest legends of saints, or verses equally destitute of spirit and metre. In almost every council the ignorance of the clergy forms a subject for reproach. It is asserted by one held in 992 that scarcely a single person was to be found in Rome itself who knew the first elements of letters. Not one priest of a thousand in Spain, about the age of Charlemagne, could address a common letter of salutation to another. In England, Alfred declares that he could not recollect a single priest south of the Thames (the most civilized part of England), at the time of his accession, who understood the ordinary prayers, or could translate Latin into his mother tongue. Nor was this better in the time of Dunstan, when, it is said, none of the clergy knew how to write or translate a Latin letter. The homilies which they preached were compiled for their use by some bishops, from former works of the same kind, or the writings of the fathers.

This universal ignorance was rendered unavoidable, among other causes, by the scarcity of books, which could only be procured at an immense price. From the conquest of Alexandria by the Saracens at the beginning of the seventh century, when the Egyptian papyrus almost ceased to be imported into Europe, to the close of the eleventh, about which time the art of making paper from cotton rags seems to have been introduced, there were no materials for writing except

parchment, a substance too expensive to be readily spared for mere purposes of literature. Hence an unfortunate practice gained ground, of erasing a manuscript in order to substitute another on the same skin. This occasioned the loss of many ancient authors, who have made way for the legends of saints, or other ecclesiastical rubbish.

If we would listen to some literary historians, we should believe that the darkest ages contained many individuals, not only distinguished among their contemporaries, but positively eminent for abilities and knowledge. A proneness to extol every monk of whose production a few letters or a devotional treatise survives, every bishop of whom it is related that he composed homilies, runs through the laborious work of "The Benedictines of St. Maur," "The Literary History of France," and, in a less degree, is observable even in Tiraboschi, and in most books of this class. Bede, Alcuin, Hincmar, Raban, and a number of inferior names, become real giants of learning in their uncritical panegyrics. But one might justly say that ignorance is the smallest defect of the writers of these dark ages. Several of them were tolerably acquainted with books; but that wherein they are uniformly deficient is original argument or expression. Almost every one is a compiler of scraps from the fathers, or from such semi-classical authors as Boethius, Cassiodorus, or Martianus Capella. Indeed I am not aware that there appeared more than two really considerable men in the republic of letters from the sixth to the middle of the eleventh century—John, surnamed Scotus or Erigena, a native of Ireland; and Gerbert, who became pope by the name of Silvester II.:[10] the first endowed with a bold and acute metaphysical genius;

[10] John Scotus, who, it is almost needless to say, must not be confounded with the still more famous metaphysician Duns Scotus, lived under Charles the Bald, in the middle of the ninth century. It admits of no doubt that John Scotus was, in a literary and philosophical sense, the most remarkable man of the Dark Ages; no one else had his boldness, his subtlety in threading the labyrinths of metaphysical speculations which, in the west of Europe, had been utterly disregarded. But it is another question whether he can be reckoned an original writer; those who have attended most to his treatise De Divisione Naturæ, the most abstruse of his works, consider it as the development of an Oriental philosophy, acquired during his residence in Greece, and nearly coinciding with some of the later Platonism of the Alexandrian school, but with a more unequivocal tendency to pantheism. This manifests itself in some extracts which have latterly been made from the treatise De Divisione Naturæ; but though Scotus had not the reputation of unblemished orthodoxy, the drift of his philosophy was not understood in that barbarous period. He might, indeed, have excited censure by his intrepid preference of reason to authority. "Authority," he says, "springs from reason, not reason from authority—true reason needs not be confirmed by any authority."

Silvester II. died in 1003. Whether he first brought the Arabic numeration into Europe, as has been commonly said, seems uncertain; it was at least not much practised for some centuries after his death.

the second excellent, for the time when he lived, in mathematical science and mechanical inventions.

§ 7. If it be demanded by what cause it happened that a few sparks of ancient learning survived throughout this long winter, we can only ascribe their preservation to the establishment of Christianity. Religion alone made a bridge, as it were, across the chaos, and has linked the two periods of ancient and modern civilization. Without this connecting principle, Europe might indeed have awakened to intellectual pursuits, and the genius of recent times needed not to be invigorated by the imitation of antiquity. But the memory of Greece and Rome would have been feebly preserved by tradition, and the monuments of those nations might have excited, on the return of civilization, that vague sentiment of speculation and wonder with which men now contemplate Persepolis or the Pyramids. It is not, however, from religion simply that we have derived this advantage, but from religion as it was modified in the Dark Ages. Such is the complex reciprocation of good and evil in the dispensations of Providence, that we may assert, with only an apparent paradox, that, had religion been more pure, it would have been less permanent, and that Christianity has been preserved by means of its corruptions. The sole hope for literature depended on the Latin language; and I do not see why that should not have been lost, if three circumstances in the prevailing religious system, all of which we are justly accustomed to disapprove, had not conspired to maintain it—the papal supremacy, the monastic institutions, and the use of a Latin liturgy. 1. A continual intercourse was kept up, in consequence of the first, between Rome and the several nations of Europe; her laws were received by the bishops, her legates presided in councils; so that a common language was as necessary in the Church as it is at present in the diplomatic relations of kingdoms. 2. Throughout the whole course of the Middle Ages there was no learning, and very little regularity of manners, among the parochial clergy. Almost every distinguished man was either the member of a chapter or of a convent. The monasteries were subjected to strict rules of discipline, and held out, at the worst, more opportunities for study than the secular clergy possessed, and fewer for worldly dissipations. But their most important service was as secure repositories for books. All our manuscripts have been preserved in this manner, and could hardly have descended to us by any other channel; at least there were intervals when I do not conceive that any

royal or private libraries existed.[11] 3. Monasteries, however, would probably have contributed very little towards the preservation of learning, if the Scriptures and the liturgy had been translated out of Latin when that language ceased to be intelligible. Every rational principle of religious worship called for such a change; but it would have been made at the expense of posterity. Moreover, the clergy did not want good pretexts, on the ground of convenience, for opposing innovation. They were habituated to the Latin words of the Church service, which had become, by this association, the readiest instruments of devotion, and with the majesty of which the Romance jargon could bear no comparison. Their musical chants were adapted to these sounds, and their hymns depended, for metrical effect, on the marked accents and powerful rhymes which the Latin language affords. The vulgate Latin of the Bible was still more venerable. It was like a copy of a lost original, and a copy attested by one of the most eminent fathers, and by the general consent of the Church. These are certainly no adequate excuses for keeping the people in ignorance; and the gross corruption of the Middle Ages is in a great degree assignable to this policy. But learning, and consequently religion, have eventually derived from it the utmost advantage.

§ 8. In the shadows of this universal ignorance a thousand superstitions, like foul animals of night, were propagated and nourished. It would be very unsatisfactory to exhibit a few specimens of this odious brood, when the real character of those times is only to be judged by their accumulated multitude. There are many books from which a sufficient number of instances may be collected to show the absurdity and ignorance of the Middle Ages in this respect. I shall only mention two, as affording more general evidence than any local or obscure superstition. In the tenth century an opinion prevailed everywhere that the end of the world was approaching. Many charters begin with these words, "As the world is now drawing to its close." An army marching under the Emperor Otho I. was so terrified by an eclipse of the sun, which it conceived to announce this consummation, as to disperse hastily on all sides. As this notion seems to have been founded on some confused theory of the millennium, it naturally died away when the seasons proceeded in the elev-

[11] Charlemagne had a library at Aix-la-Chapelle, which he directed to be sold at his death for the benefit of the poor. His son Louis is said to have collected some books. But this rather confirms, on the whole, my supposition that, in some periods, no royal or private libraries existed, since there were not always princes or nobles with the spirit of Charlemagne, or even Louis the Debonair.

enth century with their usual regularity. A far more remarkable and permanent superstition was the appeal to Heaven in judicial controversies, whether through the means of combat or of ordeal. The principle of these was the same; but in the former it was mingled with feelings independent of religion—the natural dictates of resentment in a brave man unjustly accused, and the sympathy of a warlike people with the display of skill and intrepidity. These, in course of time, almost obliterated the primary character of judicial combat, and ultimately changed it into the modern duel, in which assuredly there is no mixture of superstition.[12] But, in the various tests of innocence which were called ordeals, this stood undisguised and unqualified. It is not necessary to describe what is so well known—the ceremonies of trial by handling hot iron, by plunging the arm into boiling fluids, by floating or sinking in cold water, or by swallowing a piece of consecrated bread. It is observable that, as the interference of Heaven was relied upon as a matter of course, it seems to have been reckoned nearly indifferent whether such a test were adopted as must, humanly considered, absolve all the guilty, or one that must convict all the innocent. The ordeals of hot iron or water were, however, more commonly used; and it has been a perplexing question by what dexterity these tremendous proofs were eluded. They seem at least to have placed the decision of all judicial controversies in the hands of the clergy, who must have known the secret, whatever that might be, of satisfying the spectators that an accused person had held a mass of burning iron with impunity. For several centuries this mode of investigation was in great repute, though not without opposition from some eminent bishops. It does discredit to the memory of Charlemagne that he was one of its warmest advocates. But the judicial combat, which, indeed, might be reckoned one species of ordeal, gradually put an end to the rest; and as the Church acquired better notions of law, and a code of her own, she strenuously exerted herself against all these barbarous superstitions.

§ 9. But the religious ignorance of the Middle Ages some-

[12] Duelling, in the modern sense of the word, exclusive of casual frays and single combat during war, was unknown before the sixteenth century. But we find one anecdote which seems to illustrate its derivation from the judicial combat. The dukes of Lancaster and Brunswick, having some differences, agreed to decide them by duel before John, king of France. The lists were prepared with the solemnity of a real trial by battle: but the king interfered to prevent the engagement. The barbarous practice of wearing swords as a part of domestic dress, which tended very much to the frequency of duelling, was not introduced till the latter part of the 15th century.

times burst out in ebullitions of epidemical enthusiasm, more remarkable than these superstitious usages, though proceeding in fact from similar causes. For enthusiasm is little else than superstition put in motion, and is equally founded on a strong conviction of supernatural agency, without any just conceptions of its nature. Nor has any denomination of Christians produced, or even sanctioned, more fanaticism than the Church of Rome. These epidemical frenzies, however, to which I am alluding, were merely tumultuous, though certainly fostered by the creed of perpetual miracles which the clergy inculcated, and drawing a legitimate precedent for religious insurrection from the Crusades. For these, among other evil consequences, seem to have principally excited a wild fanaticism that did not sleep for several centuries.

The first conspicuous appearance of it was in the reign of Philip Augustus, when the mercenary troops dismissed from the pay of that prince and of Henry II. committed the greatest outrages in the south of France. One Durand, a carpenter, deluded, it is said, by a contrived appearance of the Virgin, put himself at the head of an army of the populace, in order to destroy these marauders. His followers were styled *Brethren of the White Caps*, from the linen coverings of their heads. They bound themselves not to play at dice nor frequent taverns, to wear no affected clothing, to avoid perjury and vain swearing. After some successes over the plunderers, they went so far as to forbid the lords to take any dues from their vassals, on pain of incurring the indignation of the brotherhood. It may easily be imagined that they were soon entirely discomfited, so that no one dared to own that he had belonged to them.

During the captivity of St. Louis in Egypt, a more extensive and terrible ferment broke out in Flanders, and spread from thence over great part of France. An impostor declared himself commissioned by the Virgin to preach a crusade, not to the rich and noble, who for their pride had been rejected of God, but the poor. His disciples were called *Pastoureaux*, the simplicity of shepherds having exposed them more readily to this delusion. In a short time they were swelled by the confluence of abundant streams to a moving mass of a hundred thousand men, divided into companies, with banners bearing a cross and a lamb, and commanded by the impostor's lieutenants. He assumed a priestly character, preaching, absolving, annulling marriages. At Amiens, Bourges, Orleans, and Paris itself, he was received as a di-

vine prophet. Even the Regent Blanche, for a time, was led away by the popular tide. His main topic was reproach of the clergy for their idleness and corruption—a theme well adapted to the ears of the people, who had long been uttering similar strains of complaint. In some towns his followers massacred the priests and plundered the monasteries. The Government at length began to exert itself; and, the public sentiment turning against the authors of so much confusion, this rabble was put to the sword or dissipated. Seventy years afterwards an insurrection almost exactly parallel to this burst out under the same pretense of a crusade. These insurgents, too, bore the name of Pastoureaux, and their short career was distinguished by a general massacre of the Jews.

But though the contagion of fanaticism spreads much more rapidly among the populace, and in modern times is almost entirely confined to it, there were examples, in the Middle Ages, of an epidemical religious lunacy from which no class was exempt. One of these occurred about the year 1260, when a multitude of every rank, age, and sex, marching two by two in procession along the streets and public roads, mingled groans and dolorous hymns with the sound of leathern scourges which they exercised upon their naked backs. From this mark of penitence, which, as it bears at least all the appearance of sincerity, is not uncommon in the Church of Rome, they acquired the name of *Flagellants*. Their career began, it is said, at Perugia, whence they spread over the rest of Italy, and into Germany and Poland. As this spontaneous fanaticism met with no encouragement from the Church, and was prudently discountenanced by the civil magistrate, it died away in a very short time. But it is more surprising that, after almost a century and a half of continual improvement and illumination, another irruption of popular extravagance burst out under circumstances exceedingly similar. "In the month of August, 1399," says a contemporary historian, "there appeared all over Italy a description of persons, called *Bianchi*, from the white linen vestment that they wore. They passed from province to province, and from city to city, crying out Misericordia! with their faces covered and bent towards the ground, and bearing before them a great crucifix. Their constant song was, Stabat Mater dolorosa. This lasted three months; and whoever did not attend their procession was reputed a heretic." Almost every Italian writer of the time takes notice of these Bianchi; and Muratori ascribes a remarkable reformation of

manners (though certainly a very transient one) to their influence. Nor were they confined to Italy, though no such meritorious exertions are imputed to them in other countries. In France their practice of covering the face gave such opportunity to crimes as to be prohibited by the Government; and we have an act on the rolls of the first Parliament of Henry IV., forbidding any one, "under pain of forfeiting all his worth, to receive the new sect in white clothes, pretending to great sanctity," which had recently appeared in foreign parts.

§ 10. The devotion of the multitude was wrought to this feverish height by the prevailing system of the clergy. In that singular polytheism which had been grafted on Christianity, nothing was so conspicuous as the belief of perpetual miracles — if, indeed, those could properly be termed miracles which, by their constant recurrence, even upon trifling occasions, might seem within the ordinary dispensations of Providence. These superstitions arose in what are called primitive times, and are certainly no part of popery, if in that word we include any especial reference to the Roman See. But successive ages of ignorance swelled the delusion to such an enormous pitch, that it was as difficult to trace, we may say without exaggeration, the real religion of the Gospel in the popular belief of the laity, as the real history of Charlemagne in the romance of Turpin. It must not be supposed that these absurdities were produced, as well as nourished, by ignorance. In most cases they were the work of deliberate imposture. Every cathedral or monastery had its tutelar saint, and every saint his legend, fabricated in order to enrich the churches under his protection by exaggerating his virtues, his miracles, and consequently his power of serving those who paid liberally for his patronage. Many of those saints were imaginary persons; sometimes a blundered inscription added a name to the calendar, and sometimes, it is said, a heathen god was surprised at the company to which he was introduced, and the rites with which he was honored.

§ 11. It would not be consonant to the nature of the present work to dwell upon the erroneousness of this religion; but its effect upon the moral and intellectual character of mankind was so prominent that no one can take a philosophical view of the Middle Ages without attending more than is at present fashionable to their ecclesiastical history. That the exclusive worship of saints, under the guidance of an artful though illiterate priesthood, degraded the understanding,

and begot a stupid credulity and fanaticism, is sufficiently evident. But it was also so managed as to loosen the bonds of religion and pervert the standard of morality. If these inhabitants of heaven had been represented as stern avengers, accepting no slight atonement for heavy offenses, and prompt to interpose their control over natural events for the detection and punishment of guilt, the creed, however impossible to be reconciled with experience, might have proved a salutary check upon a rude people, and would at least have had the only palliation that can be offered for a religious imposture, its political expediency. In the legends of those times, on the contrary, they appeared only as perpetual intercessors, so good-natured and so powerful, that a sinner was more emphatically foolish than he is usually represented if he failed to secure himself against any bad consequences. For a little attention to the saints, and especially to the Virgin, with due liberality to their servants, had saved, he would be told, so many of the most atrocious delinquents, that he might equitably presume upon similar luck in his own case.

This monstrous superstition grew to its height in the twelfth century. For the advance that learning then made was by no means sufficient to counteract the vast increase of monasteries, and the opportunities which the greater cultivation of modern languages afforded for the diffusion of legendary tales. It was now, too, that the veneration paid to the Virgin, in early times very great, rose to an almost exclusive idolatry. It is difficult to conceive the stupid absurdity and the disgusting profaneness of those stories which were invented by the monks to do her honor.

§ 12. At the same time, it must be admitted that the evils of superstition in the Middle Ages, though separately considered very serious, are not to be weighed against the benefits of the religion with which they were so mingled. In the original principles of monastic orders, and the rules by which they ought at least to have been governed, there was a character of meekness, self-denial, and charity that could not wholly be effaced. These virtues, rather than justice and veracity, were inculcated by the religious ethics of the Middle Ages; and in the relief of indigence it may, upon the whole, be asserted that the monks did not fall short of their profession. This eleemosynary spirit, indeed, remarkably distinguishes both Christianity and Mohammedanism from the moral systems of Greece and Rome, which were very deficient in general humanity and sympathy with suffering. Nor do we

find in any single instance during ancient times, if I mistake not, those public institutions for the alleviation of human miseries which have long been scattered over every part of Europe. The virtues of the monks assumed a still higher character when they stood forward as protectors of the oppressed. By an established law, founded on very ancient superstition, the precincts of a church afforded sanctuary to accused persons. Under a due administration of justice this privilege would have been simply and constantly mischievous, as we properly consider it to be in those countries where it still subsists. But in the rapine and tumult of the Middle Ages the right of sanctuary might as often be a shield to innocence as an immunity to crime. We can hardly regret, in reflecting on the desolating violence which prevailed, that there should have been some green spots in the wilderness where the feeble and the persecuted could find refuge. How must this right have enhanced the veneration for religious institutions! How gladly must the victims of internal warfare have turned their eyes from the baronial castle, the dread and scourge of the neighborhood, to those venerable walls within which not even the clamor of arms could be heard to disturb the chant of holy men and the sacred service of the altar! The protection of the sanctuary was never withheld. A son of Chilperic, king of France, having fled to that of Tours, his father threatened to ravage all the lands of the Church unless they gave him up. Gregory the historian, bishop of the city, replied in the name of his clergy that Christians could not be guilty of an act unheard of among pagans. The king was as good as his word, and did not spare the estate of the Church, but dared not infringe its privileges. He had, indeed, previously addressed a letter to St. Martin, which was laid on his tomb in the Church, requesting permission to take away his son by force; but the honest saint returned no answer.

The virtues, indeed, or supposed virtues, which had induced a credulous generation to enrich so many of the monastic orders, were not long preserved. We must reject, in the excess of our candor, all testimonies that the Middle Ages present, from the solemn declaration of councils and reports of judicial inquiry to the casual evidence of common fame in the ballad or romance, if we would extenuate the general corruption of those institutions. In vain new rules of discipline were devised, or the old corrected by reforms. Many of their worst vices grew so naturally out of their mode of life, that a stricter discipline could have no tendency to ex-

tirpate them. Such were the frauds I have already noticed, and the whole scheme of hypocritical austerities. Their extreme licentiousness was sometimes hardly concealed by the cowl of sanctity. I know not by what right we should disbelieve the reports of the visitation under Henry VIII., entering as they do into a multitude of specific charges both probable in their nature and consonant to the unanimous opinion of the world. Doubtless there were many communities, as well as individuals, to whom none of these reproaches would apply. In the very best view, however, that can be taken of monasteries, their existence is deeply injurious to the general morals of a nation. They withdraw men of pure conduct and conscientious principles from the exercise of social duties, and leave the common mass of human vice more unmixed. Such men are always inclined to form schemes of ascetic perfection, which can only be fulfilled in retirement; but in the strict rules of monastic life, and under the influence of a grovelling superstition, their virtue lost all its usefulness. Their frauds, however, were less atrocious than the savage bigotry with which they maintained their own system and infected the laity. In Saxony, Poland, Lithuania, and the countries on the Baltic Sea, a sanguinary persecution extirpated the original idolatry. The Jews were everywhere the objects of popular insult and oppression, frequently of a general massacre, though protected, it must be confessed, by the laws of the Church, as well as in general by temporal princes. Of the Crusades it is only necessary to repeat that they began in a tremendous eruption of fanaticism, and ceased only because that spirit could not be constantly kept alive A similar influence produced the devastation of Languedoc, the stakes and scaffolds of the Inquisition, and rooted in the religious theory of Europe those maxims of intolerance which it has so slowly, and still perhaps so imperfectly, renounced.

§ 13. It is a frequent complaint of ecclesiastical writers that the rigorous penances imposed by the primitive canons upon delinquents were commuted in a laxer state of discipline for less severe atonements, and ultimately indeed for money. We must not, however, regret that the clergy should have lost the power of compelling men to abstain fifteen years from eating meat, or to stand exposed to public derision at the gates of a church. Such implicit submissiveness could only have produced superstition and hypocrisy among the laity, and prepared the road for a tyranny not less oppressive than that of India or ancient Egypt. Indeed the two earliest

instances of ecclesiastical interference with the rights of sovereigns—namely, the deposition of Wamba, in Spain, and that of Louis the Debonair—were founded upon this austere system of penitence. But it is true that a repentance redeemed by money or performed by a substitute could have no salutary effect on the sinner; and some of the modes of atonement which the Church most approved were particularly hostile to public morals. None was so usual as pilgrimage, whether to Jerusalem or Rome, which were the great objects of devotion, or to the shrine of some national saint—a James of Compostella, a David, or a Thomas à Becket. This licensed vagrancy was naturally productive of dissoluteness, especially among the women. Our English ladies, in their zeal to obtain the spiritual treasures of Rome, are said to have relaxed the necessary caution about one that was in their own custody. There is a capitulary of Charlemagne directed against itinerant penitents, who probably considered the iron chain around their necks an expiation of future as well as past offenses.

The Crusades may be considered as martial pilgrimages on an enormous scale, and their influence upon general morality seems to have been altogether pernicious. Those who served under the cross would not, indeed, have lived very virtuously at home; but the confidence in their own merits, which the principle of such expeditions inspired, must have aggravated the ferocity and dissoluteness of their ancient habits. Several historians attested the depravation of morals which existed both among the crusaders and in the states formed out of their conquests.

§ 14. While religion had thus lost almost every quality that renders it conducive to the good order of society, the control of human law was still less efficacious. But this part of my subject has been anticipated in other passages of the present work; and I shall only glance at the want of regular subordination which rendered legislative and judicial edicts a dead letter, and at the incessant private warfare rendered legitimate by the usages of most Continental nations. Such hostilities, conducted as they must usually have been with injustice and cruelty, could not fail to produce a degree of rapacious ferocity in the general disposition of a people. And this certainly was among the characteristics of every nation for many centuries.

It is easy to infer the degradation of society during the Dark Ages from the state of religion and police. Certainly there are a few great landmarks of moral distinctions

so deeply fixed in human nature, that no degree of rudeness can destroy, nor even any superstition remove, them. Wherever an extreme corruption has in any particular society defaced these sacred archetypes that are given to guide and correct the sentiments of mankind, it is in the course of Providence that the society itself should perish by internal discord or the sword of a conqueror. In the worst ages of Europe there must have existed the seeds of social virtues, of fidelity, gratitude, and disinterestedness, sufficient at least to preserve the public approbation of more elevated principles than the public conduct displayed. Without these imperishable elements there could have been no restoration of the moral energies; nothing upon which reformed faith, revived knowledge, renewed law, could exercise their nourishing influences. But history, which reflects only the more prominent features of society, can not exhibit the virtues that were scarcely able to struggle through the general depravation. I am aware that a tone of exaggerated declamation is at all times usual with those who lament the vices of their own time; and writers of the Middle Ages are in abundant need of allowance on this score. Nor is it reasonable to found any inferences as to the general condition of society on single instances of crimes, however atrocious, especially when committed under the influence of violent passion. Such enormities are the fruit of every age, and none is to be measured by them. They make, however, a strong impression at the moment, and thus find a place in contemporary annals, from which modern writers are commonly glad to extract whatever may seem to throw light upon manners. I shall, therefore, abstain from producing any particular cases of dissoluteness or cruelty from the records of the Middle Ages, lest I should weaken a general proposition by offering an imperfect induction to support it, and shall content myself with observing that times to which men sometimes appeal, as to a golden period, were far inferior in every moral comparison to those in which we are thrown. One crime, as more universal and characteristic than others, may be particularly noticed. All writers agree in the prevalence of judicial perjury. It seems to have almost invariably escaped human punishment; and the barriers of superstition were in this, as in every other instance, too feeble to prevent the commission of crimes. Many of the proofs by ordeal were applied to witnesses as well as those whom they accused; and undoubtedly trial by combat was preserved in a considerable degree on account of the difficulty experienced

in securing a just cause against the perjury of witnesses. Robert, king of France, perceiving how frequently men forswore themselves upon the relics of saints, and less shocked apparently at the crime than at the sacrilege, caused an empty reliquary of crystal to be used, that those who touched it might incur less guilt in fact, though not in intention. Such an anecdote characterizes both the man and the times.

§ 15. The favorite diversions of the Middle Ages, in the intervals of war, were those of hunting and hawking. The former must in all countries be a source of pleasure; but it seems to have been enjoyed in moderation by the Greeks and Romans. With the Northern invaders, however, it was rather a predominant appetite than an amusement; it was their pride and their ornament, the theme of their songs, the object of their laws, and the business of their lives. Falconry, unknown as a diversion to the ancients, became from the fourth century an equally delightful occupation. From the Salic and other barbarous codes of the fifth century to the close of the period under our review, every age would furnish testimony to the ruling passion for these two species of chase, or, as they were sometimes called, the mysteries of woods and rivers. A knight seldom stirred from his house without a falcon on his wrist or a greyhound that followed him. Thus are Harold and his attendants represented in the famous tapestry of Bayeux. And in the monuments of those who died anywhere but on the field of battle, it is usual to find the greyhound lying at their feet, or the bird upon their wrists. Nor are the tombs of ladies without their falcon; for this diversion, being of less danger and fatigue than the chase, was shared by the delicate sex.

It was impossible to repress the eagerness with which the clergy, especially after the barbarians were tempted by rich bishoprics to take upon them the sacred functions, rushed into these secular amusements. Prohibitions of councils, however frequently repeated, produced little effect. In some instances a particular monastery obtained a dispensation. Thus that of St. Denis, in 774, represented to Charlemagne that the flesh of hunted animals was salutary for sick monks, and that their skins would serve to bind the books in the library. Reasons equally cogent, we may presume, could not be wanting in every other case. As the bishops and abbots were perfectly feudal lords, and often did not scruple to lead their vassals into the field, it was not to be expected that they should debar themselves of an innocent pastime. It was hardly such, indeed, when practised at the expense of others. Alex-

ander III., by a letter to the clergy of Berkshire, dispenses with their keeping the archdeacon in dogs and hawks during his visitation. This season gave jovial ecclesiastics an opportunity of trying different countries. An archbishop of York, in 1321, seems to have carried a train of two hundred persons, who were maintained at the expense of the abbeys on his road, and to have hunted with a pack of hounds from parish to parish. The Third Council of Lateran, in 1180, had prohibited this amusement on such journeys, and restricted bishops to a train of forty or fifty horses.

Though hunting had ceased to be a necessary means of procuring food, it was a very convenient resource, on which the wholesomeness and comfort, as well as the luxury, of the table depended. Before the natural pastures were improved, and new kinds of fodder for cattle discovered, it was impossible to maintain the summer stock during the cold season. Hence a portion of it was regularly slaughtered and salted for winter provision. We may suppose that, when no alternative was offered but these salted meats, even the leanest venison was devoured with relish. There was somewhat more excuse, therefore, for the severity with which the lords of forests and manors preserved the beasts of chase than if they had been considered as merely objects of sport. The laws relating to preservation of game were in every country uncommonly rigorous. They formed in England that odious system of forest laws which distinguished the tyranny of our Norman kings. Capital punishment for killing a stag or wild boar was frequent, and perhaps warranted by law, until the charter of John. The French code was less severe, but even Henry IV. enacted the pain of death against the repeated offense of chasing deer in the royal forests. The privilege of hunting was reserved to the nobility till the reign of Louis IX., who extended it in some degree to persons of lower birth.

This excessive passion for the sports of the field produced those evils which are apt to result from it—a strenuous idleness which disdained all useful occupations, and an oppressive spirit towards the peasantry. The devastation committed under the pretense of destroying wild animals, which had been already protected in their depredations, is noticed in serious authors, and has also been the topic of popular ballads. What effect this must have had on agriculture it is easy to conjecture. The levelling of forests, the draining of morasses, and the extirpation of mischievous animals which inhabit them, are the first objects of man's labor in

reclaiming the earth to his use; and these were forbidden by a landed aristocracy, whose control over the progress of agricultural improvement was unlimited, and who had not yet learned to sacrifice their pleasures to their avarice.

§ 16. These habits of the rich, and the miserable servitude of those who cultivated the land, rendered its fertility unavailing. Predial servitude, indeed, in some of its modifications, has always been the great bar to improvement. In the agricultural economy of Rome the laboring husbandman, a menial slave of some wealthy senator, had not even that qualified interest in the soil which the tenure of villenage afforded to the peasant of feudal ages. Italy, therefore, a country presenting many natural impediments, was but imperfectly reduced into cultivation before the irruption of the barbarians. That revolution destroyed agriculture with every other art, and succeeding calamities during five or six centuries left the finest regions of Europe unfruitful and deslate. There are but two possible modes in which the produce of the earth can be increased; one by rendering fresh land serviceable, the other by improving the fertility of that which is already cultivated. The last is only attainable by the application of capital and of skill to agriculture, neither of which could be expected in the ruder ages of society. The former is, to a certain extent, always practicable while waste lands remain; but it was checked by laws hostile to improvement, such as the manerial and commonable rights in England, and by the general tone of manners.

Till the reign of Charlemagne there were no towns in Germany, except a few that had been erected on the Rhine and Danube by the Romans. A house with its stables and farm buildings, surrounded by a hedge or inclosure, was called a court, or, as we find it in our law-books, a curtilage; the toft, or homestead, of a more genuine English dialect. One of these, with the adjacent domain of arable fields and woods, had the name of a villa or manse. Several manses composed a march, and several marches formed a pagus or district. From these elements in the progress of population arose villages and towns. In France undoubtedly there were always cities of some importance. Country parishes contained several manses or farms of arable land around a common pasture, where every one was bound by custom to feed his cattle.

§ 17. The condition even of internal trade was hardly preferable to that of agriculture. There is not a vestige, perhaps, to be discovered for several centuries of any con-

siderable manufacture—I mean, of working up articles of common utility to an extent beyond what the necessities of an adjacent district required. Rich men kept domestic artisans among their servants; even kings, in the ninth century, had their clothes made by the women upon their farms; but the peasantry must have been supplied with garments and implements of labor by purchase; and every town, it can not be doubted, had its weaver, its smith, and its carrier. But there were almost insuperable impediments to any extended traffic—the insecurity of movable wealth, and difficulty of accumulating it; the ignorance of mutual wants; the peril of robbery in conveying merchandise, and the certainty of extortion. In the domains of every lord a toll was to be paid in passing his bridge, or along his highway, or at his market. These customs, equitable and necessary in their principle, became in practice oppressive, because they were arbitrary, and renewed in every petty territory which the road might intersect. Several of Charlemagne's capitularies repeat complaints of these exactions, and endeavor to abolish such tolls as were not founded on prescription. One of them rather amusingly illustrates the modesty and moderation of the land-holders. It is enacted that no one shall be compelled to go out of his way in order to pay toll at a particular bridge, when he can cross the river more conveniently at another place. These provisions, like most others of that age, were unlikely to produce much amendment. It was only the milder species, however, of feudal lords who were content with the tribute of merchants. The more ravenous descended from their fortresses to pillage the wealthy traveller, or shared in the spoil of inferior plunderers, whom they both protected and instigated. Proofs occur, even in the later periods of the Middle Ages, when government had regained its energy, and civilization had made considerable progress, of public robberies systematically perpetrated by men of noble rank. In the more savage times, before the twelfth century, they were probably too frequent to excite much attention. It was a custom in some places to waylay travellers, and not only to plunder, but to sell them as slaves, or compel them to pay a ransom. Harold, son of Godwin, having been wrecked on the coast of Ponthieu, was imprisoned by the lord, says an historian, according to the custom of that territory. Germany appears to have been, upon the whole, the country where downright robbery was most unscrupulously practised by the great. Their castles, erected on almost inaccessible

heights among the woods, became the secure receptacles of predatory bands, who spread terror over the country. From these barbarian lords of the Dark Ages, as from a living model, the romances are said to have drawn their giants and other disloyal enemies of true chivalry. Robbery, indeed, is the constant theme both of the capitularies and of the Anglo-Saxon laws; one has more reason to wonder at the intrepid thirst of lucre, which induced a very few merchants to exchange the products of different regions, than to ask why no general spirit of commercial activity prevailed.

Under all these circumstances it is obvious that very little Oriental commerce could have existed in these western countries of Europe. Destitute as they have been created, speaking comparatively, of natural productions fit for exportation, their invention and industry are the great resources from which they can supply the demands of the East. Before any manufactures were established in Europe, her commercial intercourse with Egypt and Asia must of necessity have been very trifling; because, whatever inclination she might feel to enjoy the luxuries of those genial regions, she wanted the means of obtaining them. It is not, therefore, necessary to rest the miserable condition of Oriental commerce upon the Saracen conquests, because the poverty of Europe is an adequate cause; and, in fact, what little traffic remained was carried on with no material inconvenience through the channel of Constantinople. Venice took the lead in trading with Greece and more eastern countries. Amalfi had the second place in the commerce of those dark ages. These cities imported, besides natural productions, the fine clothes of Constantinople; yet, as this traffic seems to have been illicit, it was not probably extensive. Their exports were gold and silver, by which, as none was likely to return, the circulating money of Europe was probably less in the eleventh century than at the subversion of the Roman Empire; furs, which were obtained from the Sclavonian countries; and arms, the sale of which to pagans or Saracens was vainly prohibited by Charlemagne and by the Holy See. A more scandalous traffic, and one that still more fitly called for prohibitory laws, was carried on in slaves. It is a humiliating proof of the degradation of Christendom, that the Venetians were reduced to purchase the luxuries of Asia by supplying the slave-market of the Saracens. Their apology would perhaps have been, that these were purchased from their heathen neighbors; but a slave-dealer was probably not very inquisi-

tive as to the faith or origin of his victim. This trade was not peculiar to Venice. In England it was very common, even after the Conquest, to export slaves to Ireland, till, in the reign of Henry II., the Irish came to a non-importation agreement, which put a stop to the practice.

§ 18. From this state of degradation and poverty all the countries of Europe have recovered, with a progression in some respects tolerably uniform, in others more unequal; and the course of their improvement, more gradual and less dependent upon conspicuous civil revolutions than their decline, affords one of the most interesting subjects into which a philosophical mind can inquire. The commencement of this restoration has usually been dated from about the close of the eleventh century; though it is unnecessary to observe that the subject does not admit of any thing approximating to chronological accuracy. It may, therefore, be sometimes not improper to distinguish the first six of the ten centuries which the present work embraces under the appellation of the *Dark* Ages—an epithet which I do not extend to the twelfth and three following. In tracing the decline of society from the subversion of the Roman Empire, we have been led, not without connection, from ignorance to superstition, from superstition to vice and lawlessness, and from thence to general rudeness and poverty. I shall pursue an inverted order in passing along the ascending scale, and class the various improvements which took place between the twelfth and fifteenth centuries under three principal heads, as they relate to the wealth, the manners, or the taste and learning of Europe. Different arrangements might probably be suggested, equally natural and convenient; but in the disposition of topics that have not always an unbroken connection with each other, no method can be prescribed as absolutely more scientific than the rest. That which I have adopted appears to me as philosophical and as little liable to transitions as any other.

PART II.

§ 1. Progress of Commercial Improvement in Flanders, Germany, and England. § 2. Baltic Trade: Hanseatic Towns. § 3. Rapid Progress of English Trade. § 4. Intercourse with the South of Europe. § 5. Progress of Commerce in the Countries upon the Mediterranean Sea. § 6. Their Manufactures. § 7. Invention of the Mariner's Compass. § 8. Maritime Laws. § 9. Usury: Money Dealings of the Jews. § 10. Banking Companies. § 11. Progress of Refinement in Manners. § 12. Domestic Architecture. § 13. Ecclesiastical Architecture. § 14. State of Agriculture. § 15. Value of Money. § 16. Improvement of the Moral Character of Society: its Causes. § 17. Police. § 18. Changes in Religious Opinion: various Sects. § 19. Chivalry: its Progress, Character, and Influence. § 20. Causes of the Intellectual Improvement of European Society. § 21. (I.) The Study of Civil Law. § 22. (II.) Institution of Universities: their Celebrity. § 23. Scholastic Philosophy. § 24. (III.) Cultivation of Modern Languages. § 25. Provençal Poets. § 26. Norman Poets: French Prose Writers. § 27. Spanish. § 28. Italian: early Poets in that Language. § 29. Dante. § 30. Petrarch. § 31. English Language: its Progress. § 32. Chaucer. § 33. (IV.) Revival of Classical Learning: Latin Writers of the Twelfth Century: Literature of the Fourteenth Century. § 34. Greek Literature: its Restoration in Italy. § 35. Invention of Printing.

§ 1. THE geographical position of Europe naturally divides its maritime commerce into two principal regions—one comprehending those countries which border on the Baltic, the German, and the Atlantic oceans; another, those situated around the Mediterranean Sea. During the four centuries which preceded the discovery of America, and especially the two former of them, this separation was more remarkable than at present, inasmuch as their intercourse, either by land or sea, was extremely limited. To the first region belonged the Netherlands, the coasts of France, Germany, and Scandinavia, and the maritime districts of England. In the second we may class the provinces of Valencia and Catalonia, those of Provence and Languedoc, and the whole of Italy.

The former, or northern division, was first animated by the woollen manufacture of Flanders. It is not easy either to discover the early beginnings of this, or to account for its rapid advancement. The fertility of that province and its facilities of interior navigation were doubtless necessary causes; but there must have been some temporary encouragement from the personal character of its sovereigns, or other accidental circumstances. Several testimonies to the flourishing condition of Flemish manufactures occur in the twelfth century, and some might perhaps be found even earlier.[1] A writer of the thirteenth asserts that all the world

[1] Macpherson's Annals of Commerce, vol. i, p. 270.

was clothed from English wool wrought in Flanders. This, indeed, is an exaggerated vaunt; but the Flemish stuffs were probably sold wherever the sea or a navigable river permitted them to be carried. Cologne was the chief trading-city upon the Rhine; and its merchants, who had been considerable even under the emperor Henry IV., established a factory at London in 1220. The woollen manufacture, notwithstanding frequent wars and the impolitic regulations of magistrates, continued to flourish in the Netherlands (for Brabant and Hainault shared it in some degree with Flanders), until England became not only capable of supplying her own demand, but a rival in all the marts of Europe. "All Christian kingdoms, and even the Turks themselves," says an historian of the sixteenth century, "lamented the desperate war between the Flemish cities and their Count Louis that broke out in 1380. For at that time Flanders was a market for the traders of all the world. Merchants from seventeen kingdoms had their settled domiciles at Bruges, besides strangers from almost unknown countries who repaired thither." During this war, and on all other occasions, the weavers both of Ghent and Bruges distinguished themselves by a democratical spirit, the consequence, no doubt, of their numbers and prosperity. Ghent was one of the largest cities in Europe, and, in the opinion of many, the best situated. But Bruges, though in circuit but half the former, was more splendid in its buildings, and the seat of far more trade; being the great staple both for Mediterranean and northern merchandise. Antwerp, which early in the sixteenth century drew away a large part of this commerce from Bruges, was not considerable in the preceding ages; nor were the towns of Zealand and Holland much noted except for their fisheries, though those provinces acquired in the fifteenth century some share of the woollen manufacture.

For the first two centuries after the Conquest our English towns, as has been observed in a different place, made some forward steps towards improvement, though still very inferior to those of the Continent. Their commerce was almost confined to the exportation of wool, the great staple commodity of England, upon which, more than any other, in its raw or manufactured state, our wealth had been founded. A woollen manufacture, however, indisputably existed under Henry II.;[2] it is noticed in regulations of Richard I.; and

[2] Blomefield, the historian of Norfolk, thinks that a colony of Flemings settled as early as this reign at Worsted, a village in that county, and immortalized its name by their manufacture. It soon reached Norwich, though not conspicuous till the reign of Edward I.

by the importation of woad under John it may be inferred to have still flourished. The disturbances of the next reign, perhaps, or the rapid elevation of the Flemish towns, retarded its growth, though a remarkable law was passed by the Oxford Parliament in 1261, prohibiting the export of wool and the importation of cloth. This, while it shows the deference paid by the discontented barons, who predominated in that Parliament, to their confederates the burghers, was evidently too premature to be enforced. We may infer from it, however, that cloths were made at home, though not sufficiently for the people's consumption.

Prohibitions of the same nature, though with a different object, were frequently imposed on the trade between England and Flanders by Edward I. and his son. As their political connections fluctuated, these princes gave full liberty and settlement to the Flemish merchants, or banished them at once from the country. Nothing could be more injurious to England than this arbitrary vacillation. The Flemings were in every respect our natural allies; but besides those connections with France, the constant enemy of Flanders, into which both the Edwards occasionally fell, a mutual alienation had been produced by the trade of the former people with Scotland, a trade too lucrative to be resigned at the king of England's request — an early instance of that conflicting selfishness of belligerents and neutrals which was destined to aggravate the animosities and misfortunes of our own time.

A more prosperous era began with Edward III., the father, as he may almost be called, of English commerce, a title not, indeed, more glorious, but by which he may, perhaps, claim more of our gratitude than as the hero of Crecy. In 1331 he took advantage of discontents among the manufacturers of Flanders to invite them as settlers into his dominions. They brought the finer manufacture of woollen cloths, which had been unknown in England. The discontents alluded to resulted from the monopolizing spirit of their corporations, who oppressed all artisans without the pale of their community. The history of corporations brings home to our minds one cardinal truth, that political institutions have very frequently but a relative and temporary usefulness, and that what forwarded improvement during one part of its course may prove to it in time a most pernicious obstacle. Corporations in England, we may be sure, wanted nothing of their usual character, and it cost Edward no little trouble to protect his colonists from the selfishness and from the blind na-

tionality of the vulgar. The emigration of Flemish weavers into England continued during this reign, and we find it mentioned at intervals for more than a century.

Commerce now became, next to liberty, the leading object of Parliament. For the greater part of our statutes from the accession of Edward III. bear relation to this subject; not always well devised, or liberal, or consistent, but by no means worse in those respects than such as have been enacted in subsequent ages. The occupation of a merchant became honorable; and, notwithstanding the natural jealousy of the two classes, he was placed, in some measure, on a footing with landed proprietors. By the statute of apparel in 37 Edward III., merchants and artificers who had five hundred pounds' value in goods and chattels might use the same dress as squires of one hundred pounds a year. And those who were worth more than this might dress like men of double that estate. Wool was still the principal article of export and source of revenue. Subsidies granted by every Parliament upon this article were, on account of the scarcity of money, commonly taken in kind. By degrees the exportation of woollen cloths increased so as to diminish that of the raw material, but the latter was not absolutely prohibited during the period under review, although some restrictions were imposed upon it by Edward IV. For a much earlier statute, in the 11th of Edward III., making the exportation of wool a capital felony, was in its terms provisional, until it should be otherwise ordered by the council; and the king almost immediately set it aside.[s]

A manufacturing district, as we see in our own country, sends out, as it were, suckers into all its neighborhood. Accordingly, the woollen manufacture spread from Flanders along the banks of the Rhine and into the northern provinces of France. In Germany the privileges conceded by Henry V. to the free cities, and especially to their artisans, gave a soul to industry; though the central parts of the empire were, for many reasons, very ill calculated for commercial enterprise during the Middle Ages. But the French towns were never so much emancipated from arbitrary power as those of Germany or Flanders; and the evils of exorbitant taxation, with those produced by the English wars, conspired to retard the advance of manufactures in France.

§ 2. The manufactures of Flanders and England found a

[s] It is worthy of notice that English wool was superior to any other for fineness during these ages. An English flock transported into Spain about 1348 is said to have been the source of the fine Spanish wool.

market, not only in these adjacent countries, but in a part of Europe which for many ages had only been known enough to be dreaded. In the middle of the eleventh century a native of Bremen, and a writer much superior to most others of his time, was almost entirely ignorant of the geography of the Baltic; doubting whether any one had reached Russia by that sea, and reckoning Esthonia and Courland among its islands.[4] But in one hundred years more the maritime regions of Mecklenburg and Pomerania, inhabited by a tribe of heathen Sclavonians, were subdued by some German princes; and the Teutonic order some time afterwards, having conquered Prussia, extended a line of at least comparative civilization as far as the Gulf of Finland. The first town erected on the coasts of the Baltic was Lübeck, which owes its foundation to Adolphus, count of Holstein, in 1140. After several vicissitudes it became independent of any sovereign but the emperor in the thirteenth century. Hamburg and Bremen, upon the other side of the Cimbric peninsula, emulated the prosperity of Lübeck; the former city purchased independence of its bishop in 1225. A colony from Bremen founded Riga, in Livonia, about 1162. The city of Dantzic grew into importance about the end of the following century. Königsberg was founded by Ottocar, king of Bohemia, in the same age.

But the real importance of these cities is to be dated from their famous union into the Hanseatic[5] confederacy. The origin of this is rather obscure, but it may certainly be nearly referred in point of time to the middle of the thirteenth century, and accounted for by the necessity of mutual defense, which piracy by sea and pillage by land had taught the merchants of Germany. The nobles endeavored to obstruct the formation of this league, which indeed was in great measure designed to withstand their exactions. It powerfully maintained the influence which the free imperial cities were at this time acquiring. Eighty of the most considerable places constituted the Hanseatic Confederacy, divided into four colleges, whereof Lübeck, Cologne, Brunswick, and Dantzic were the leading towns. Lübeck held the chief rank, and became, as it were, the patriarchal see of the league; whose province it was to preside in all general discussions for mercantile, political, or military purposes, and to carry them into execution. The league had four principal

[4] Adam Bremensis, de Situ Daniæ, p. 13. (Elzevir edit.)

[5] Derived from the ancient German word *Hanse*, signifying an association for mutual support.

factories in foreign parts—at London, Bruges, Bergen, and Novogorod; endowed by the sovereigns of those cities with considerable privileges, to which every merchant belonging to a Hanseatic town was entitled. In England the German guildhall or factory was established by concession of Henry III.; and in later periods the Hanse traders were favored among many others in the capricious vacillations of our mercantile policy. The English had also their factories on the Baltic coast as far as Prussia and in the dominions of Denmark.

§ 3. This opening of a Northern market powerfully accelerated the growth of our own commercial opulence, especially after the woollen manufacture had begun to thrive. From about the middle of the fourteenth century we find continual evidences of a rapid increase in wealth. Thus, in 1363, Picard, who had been lord mayor some years before, entertained Edward III. and the Black Prince, the kings of France, Scotland, and Cyprus, with many of the nobility, at his own house in the Vintry, and presented them with handsome gifts. Philpot, another eminent citizen in Richard II.'s time, when the trade of England was considerably annoyed by privateers, hired 1000 armed men, and dispatched them to sea, where they took fifteen Spanish vessels with their prizes. We find Richard obtaining a great deal from private merchants and trading towns. In 1379 he got £5000 from London, 1000 marks from Bristol, and in proportion from smaller places. In 1386 London gave £4000 more, and 10,000 marks in 1397. The latter sum was obtained also for the coronation of Henry VI. Nor were the contributions of individuals contemptible, considering the high value of money. Hinde, a citizen of London, lent to Henry IV. £2000 in 1407, and Whittington one-half of that sum. The merchants of the staple advanced £4000 at the same time. Our commerce continued to be regularly and rapidly progressive during the fifteenth century. The famous Canynges of Bristol, under Henry VI. and Edward IV., had ships of 900 tons burden. The trade and even the internal wealth of England reached so much higher a pitch in the reign of the last-mentioned king than at any former period, that we may perceive the wars of York and Lancaster to have produced no very serious effect on national prosperity. Some battles were doubtless sanguinary; but the loss of lives in battle is soon repaired by a flourishing nation; and the devastation occasioned by armies was both partial and transitory.

§ 4. A commercial intercourse between these northern

and southern regions of Europe began about the early part of the fourteenth century, or, at most, a little sooner. Until, indeed, the use of the magnet was thoroughly understood, and a competent skill in marine architecture as well as navigation acquired, the Italian merchants were scarce likely to attempt a voyage perilous in itself, and rendered more formidable by the imaginary difficulties which had been supposed to attend an expedition beyond the straits of Hercules. But the English, accustomed to their own rough seas, were always more intrepid, and probably more skillful navigators. Though it was extremely rare, even in the fifteenth century, for an English trading-vessel to appear in the Mediterranean, yet a famous military armament, that destined for the crusade of Richard I., displayed at a very early time the seamanship of our countrymen. In the reign of Edward II. we find mention in Rymer's Collection of Genoese ships trading to Flanders and England. His son was very solicitous to preserve the friendship of that opulent republic; and it is by his letters to his Senate, or by royal orders restoring ships unjustly seized, that we come by a knowledge of those facts which historians neglect to relate. Pisa shared a little in this traffic, and Venice more considerably; but Genoa was beyond all competition at the head of Italian commerce in these seas during the fourteenth century. In the next, her general decline left it more open to her rival; but I doubt whether Venice ever maintained so strong a connection with England. Through London and Bruges, their chief station in Flanders, the merchants of Italy and of Spain transported Oriental produce to the farthest parts of the North. The inhabitants of the Baltic coast were stimulated by the desire of precious luxuries which they had never known; and these wants, though selfish and frivolous, are the means by which nations acquire civilization, and the earth is rendered fruitful of its produce. As the carriers of this trade the Hanseatic merchants resident in England and Flanders derived profits through which eventually of course those countries were enriched. It seems that the Italian vessels unloaded at the marts of London or Bruges, and that such part of their cargoes as were intended for a more northern trade came there into the hands of the German merchants. In the reign of Henry VI. England carried on a pretty extensive traffic with the countries around the Mediterranean, for whose commodities her wool and woollen cloths enabled her to pay.

§ 5. The commerce of the southern division, though it did

not, I think, produce more extensively beneficial effects upon the progress of society, was both earlier and more splendid than that of England and the neighboring countries. Besides Venice, which has been mentioned already, Amalfi kept up the commercial intercourse of Christendom with the Saracen countries before the first crusade. It was the singular fate of this city to have filled up the interval between two periods of civilization, in neither of which she was destined to be distinguished. Scarcely known before the end of the sixth century, Amalfi ran a brilliant career as a free and trading republic, which was checked by the arms of a conqueror in the middle of the twelfth. Since her subjugation by Roger, king of Sicily, the name of a people who for a while connected Europe with Asia has hardly been repeated, except for two discoveries falsely imputed to them—those of the Pandects and of the compass.

But the decline of Amalfi was amply compensated to the rest of Italy by the constant elevation of Pisa, Genoa, and Venice in the twelfth and ensuing ages. The Crusades led immediately to this growing prosperity of the commercial cities. Besides the profit accruing from so many naval armaments which they supplied, and the continual passage of private adventurers in their vessels, they were enabled to open a more extensive channel of Oriental traffic than had hitherto been known. These three Italian republics enjoyed immunities in the Christian principalities of Syria; possessing separate quarters in Acre, Tripoli, and other cities, where they were governed by their own laws and magistrates. Though the progress of commerce must, from the condition of European industry, have been slow, it was uninterrupted; and the settlements in Palestine were becoming important as factories, an use of which Godfrey and Urban little dreamed, when they were lost through the guilt and imprudence of their inhabitants. Villani laments the injury sustained by commerce in consequence of the capture of Acre; but the loss was soon retrieved, not perhaps by Pisa and Genoa, but by Venice, who formed connections with the Saracen governments, and maintained her commercial intercourse with Syria and Egypt by their license, though subject probably to heavy exactions. Sanuto, a Venetian author at the beginning of the fourteenth century, has left a curious account of the Levant trade which his countrymen carried on at that time. Their imports it is easy to guess, and it appears that timber, brass, tin, and lead, as well as the precious metals, were exported to Alexandria, besides oil, saffron, and some of the produc-

tions of Italy, and even wool and woollen cloths. The European side of the account had therefore become respectable.

The commercial cities enjoyed as great privileges at Constantinople as in Syria, and they bore an eminent part in the vicissitudes of the Eastern Empire. After the capture of Constantinople by the Latin crusaders, the Venetians, having been concerned in that conquest, became, of course, the favored traders under the new dynasty; possessing their own district in the city, with their magistrate or podestà, appointed at Venice, and subject to the parent republic. When the Greeks recovered the seat of their empire, the Genoese, who, from jealousy of their rivals, had contributed to that revolution, obtained similar immunities. This powerful and enterprising state, in the fourteenth century, sometimes the ally, sometimes the enemy, of the Byzantine Court, maintained its independent settlement at Pera. From thence she spread her sails into the Euxine, and, planting a colony at Caffa, in the Crimea, extended a line of commerce with the interior regions of Asia which even the skill and spirit of our own times has not yet been able to revive.

The French provinces which border on the Mediterranean Sea partook in the advantages which it offered. Not only Marseilles, whose trade had continued in a certain degree throughout the worst ages, but Narbonne, Nismes, and especially Montpellier, were distinguished for commercial prosperity. A still greater activity prevailed in Catalonia. From the middle of the thirteenth century Barcelona began to emulate the Italian cities in both the branches of naval energy, war and commerce. Engaged in frequent and severe hostilities with Genoa, and sometimes with Constantinople, while their vessels traded to every part of the Mediterranean, and even of the English Channel, the Catalans might justly be reckoned among the first of maritime nations. The commerce of Barcelona has never since attained so great a height as in the fifteenth century.

§ 6. The introduction of a silk manufacture at Palermo by Roger Guiscard, in 1148, gave, perhaps, the earliest impulse to the industry of Italy. Nearly about the same time the Genoese plundered two Moorish cities of Spain, from which they derived the same art. In the next age this became a staple manufacture of the Lombard and Tuscan republics, and the cultivation of mulberries was enforced by their laws. Woollen stuffs, though the trade was, perhaps, less conspicuous than that of Flanders, and though many of the coarser

kinds were imported from thence, employed a multitude of workmen in Italy, Catalonia, and the south of France. Among the trading companies into which the middling ranks were distributed, those concerned in silk and woollens were most numerous and honorable.

§ 7. A property of a natural substance, long overlooked, even though it attracted observation by a different peculiarity, has influenced by its accidental discovery the fortunes of mankind more than all the deductions of philosophy. It is, perhaps, impossible to ascertain the epoch when the polarity of the magnet was first known in Europe. The common opinion, which ascribes its discovery to a citizen of Amalfi in the fourteenth century, is undoubtedly erroneous. Guiot de Provins, a French poet, who lived about the year 1200, or at the latest under St. Louis, describes it in the most unequivocal language. James de Vitry, a bishop in Palestine before the middle of the thirteenth century, and Guido Guinizzelli, an Italian poet of the same time, are equally explicit. The French as well as Italians claim the discovery as their own; but whether it were due to either of these nations, or rather learned from their intercourse with the Saracens, is not easily to be ascertained. For some time, perhaps, even this wonderful improvement in the art of navigation might not be universally adopted by vessels sailing within the Mediterranean, and accustomed to their old system of observations. But when it became more established, it naturally inspired a more fearless spirit of adventure. It was not, as has been mentioned, till the beginning of the fourteenth century that the Genoese and other nations around that inland sea steered into the Atlantic Ocean towards England and Flanders. This intercourse with the Northern countries enlivened their trade with the Levant by the exchange of productions which Spain and Italy do not supply, and enriched the merchants by means of whose capital the exports of London and of Alexandria were conveyed into each other's harbors.

§ 8. The usual risks of navigation, and those incident to commercial adventure, produce a variety of questions in every system of jurisprudence, which, though always to be determined, as far as possible, by principles of natural justice, must in many cases depend upon established customs. These customs of maritime law were anciently reduced into a code by the Rhodians, and the Roman emperors preserved or reformed the constitutions of that republic. It would be hard to say how far the tradition of this early jurisprudence

survived the decline of commerce in the darker ages; but after it began to recover itself, necessity suggested, or recollection prompted a scheme of regulations resembling in some degree but much more enlarged than those of antiquity. This was formed into a written code, "Il Consolato del Mare," not much earlier, probably, than the middle of the thirteenth century; and its promulgation seems rather to have proceeded from the citizens of Barcelona than from those of Pisa or Venice, who have also claimed to be the first legislators of the sea. Besides regulations simply mercantile, this system has defined the mutual rights of neutral and belligerent vessels, and thus laid the basis of the positive law of nations in its most important and disputed cases. The King of France and Count of Provence solemnly acceded to this maritime code, which hence acquired a binding force within the Mediterranean Sea; and in most respects the law merchant of Europe is at present conformable to its provisions. A set of regulations, chiefly borrowed from the "Consolato," was compiled in France under the reign of Louis IX., and prevailed in their own country. These have been denominated the laws of Oleron, from an idle story that they were enacted by Richard I. while his expedition to the Holy Land lay at anchor in that island. Nor was the North without its peculiar code of maritime jurisprudence—namely, the ordinances of Wisbuy, a town in the isle of Gothland, principally compiled from those of Oleron, before the year 1400, by which the Baltic traders were governed.

There was abundant reason for establishing among maritime nations some theory of mutual rights, and for securing the redress of injuries, as far as possible, by means of acknowledged tribunals. In that state of barbarous anarchy which so long resisted the coercive authority of civil magistrates the sea held out even more temptation and more impunity than the land; and when the laws had regained their sovereignty, and neither robbery nor private warfare was any longer tolerated, there remained that great common of mankind, unclaimed by any king, and the liberty of the sea was another name for the security of plunderers. A pirate, in a well-armed quick-sailing vessel, must feel, I suppose, the enjoyments of his exemption from control more exquisitely than any other freebooter; and darting along the bosom of the ocean, under the impartial radiance of the heavens, may deride the dark concealments and hurried flights of the forest robber. His occupation is, indeed, extinguished by the civilization of later ages, or confined to distant climates. But in the thirteenth and fourteenth

centuries a rich vessel was never secure from attack; and neither restitution nor punishment of the criminals was to be obtained from governments who sometimes feared the plunderer and sometimes connived at the offense. Mere piracy, however, was not the only danger. The maritime towns of Flanders, France, and England, like the free republics of Italy, prosecuted their own quarrels by arms, without asking the leave of their respective sovereigns. This practice, exactly analogous to that of private war in the feudal system, more than once involved the kings of France and England in hostility.* But where the quarrel did not proceed to such a length as absolutely to engage two opposite towns, a modification of this ancient right of revenge formed part of the regular law of nations, under the name of reprisals. Whoever was plundered or injured by the inhabitant of another town obtained authority from his own magistrates to seize the property of any other person belonging to it, until his loss should be compensated. This law of reprisal was not confined to maritime places; it prevailed in Lombardy, and probably in the German cities. Thus, if a citizen of Modena were robbed by a Bolognese, he complained to the magistrates of the former city, who represented the case to those of Bologna, demanding redress. If this were not immediately granted, letters of reprisals were issued to plunder the territory of Bologna till the injured party should be reimbursed by sale of the spoil. Edward III. remonstrates, in an instrument published by Rymer, against letters of marque granted by the King of Aragon to one Berenger de la Tone, who had been robbed by an English pirate of £2000, alleging that, inasmuch as he had always been ready to give redress to the party, it seemed to his counsellors that there was no just cause for reprisals upon the king's or his subjects' property. This passage is so far curious as it asserts the existence of a customary law of nations, the knowledge of which was already a sort of learning. Sir E. Coke speaks of this right of private reprisals as if it still existed; and, in fact, there are instances of granting such letters as late as the reign of Charles I.

A practice founded on the same principles as reprisal, though rather less violent, was that of attaching the goods or persons of resident foreigners for the debts of their country-

* The Cinque Ports and other trading towns of England were in a constant state of hostility with their opposite neighbors during the reigns of Edward I. and II. One might quote almost half the instruments in Rymer in proof of these conflicts, and of those with the mariners of Norway and Denmark. Sometimes mutual envy produced frays between different English towns. Thus in 1254 the Winchelsea mariners attacked a Yarmouth galley, and killed some of her men.

men. This, indeed, in England, was not confined to foreigners until the statute of Westminster I., c. 23, which enacts that "no stranger who is of this realm shall be distrained in any town or market for a debt wherein he is neither principal nor surety." Henry III. had previously granted a charter to the burgesses of Lübeck that they should "not be arrested for the debt of any of their countrymen, unless the magistrates of Lübeck neglected to compel payment." But, by a variety of grants from Edward II., the privileges of English subjects under the statute of Westminster were extended to most foreign nations. This unjust responsibility had not been confined to civil cases. One of a company of Italian merchants, the Spini, having killed a man, the officers of justice seized the bodies and effects of all the rest.

§ 9. If under all these obstacles, whether created by barbarous manners, by national prejudice, or by the fraudulent and arbitrary measures of princes, the merchants of different countries became so opulent as almost to rival the ancient nobility, it must be ascribed to the greatness of their commercial profits. The trading companies possessed either a positive or a virtual monopoly, and held the keys of those Eastern regions, for the luxuries of which the progressive refinement of manners produced an increasing demand. It is not easy to determine the average rate of profit; but we know that the interest of money was exceedingly high throughout the Middle Ages. At Verona, in 1228, it was fixed by law at twelve and a half per cent.; at Modena, in 1270, it seems to have been as high as twenty. The republic of Genoa, towards the end of the fourteenth century, when Italy had grown wealthy, paid only from seven to ten per cent. to her creditors. But in France and England the rate was far more oppressive. An ordinance of Philip the Fair, in 1311, allows twenty per cent. after the first year of the loan. Under Henry III., according to Matthew Paris, the debtor paid ten per cent. every two months; but this is absolutely incredible as a general practice. This was not merely owing to scarcity of money, but to the discouragement which a strange prejudice opposed to one of the most useful and legitimate branches of commerce. Usury, or lending money for profit, was treated as a crime by the theologians of the Middle Ages; and though the superstition has been eradicated, some part of the prejudice remains in our legislation. This trade in money, and indeed a great part of inland trade in general, had originally fallen to the Jews, who were noted for their usury so early as the sixth

century.' For several subsequent ages they continued to employ their capital and industry to the same advantage, with little molestation from the clergy, who always tolerated their avowed and national infidelity, and often with some encouragement from princes. In the twelfth century we find them not only possessed of landed property in Languedoc, and cultivating the studies of medicine and Rabbinical literature in their own academy at Montpellier, under the protection of the Count of Toulouse, but invested with civil offices. In Spain they were placed by some of the municipal laws on the footing of Christians, with respect to the composition for their lives, and seem in no other European country to have been so numerous or considerable. The diligence and expertness of this people in all pecuniary dealings recommended them to princes who were solicitous about the improvement of their revenue. Two kings of Castile, Alonzo XI. and Peter the Cruel, incurred much odium by employing Jewish ministers in their treasury. But in other parts of Europe their condition had, before that time, begun to change for the worse—partly from the fanatical spirit of the Crusades, which prompted the populace to massacre, and partly from the jealousy which their opulence excited. Kings, in order to gain money and popularity at once, abolished the debts due to the children of Israel, except a part which they retained as the price of their bounty. One is at a loss to conceive the process of reasoning in an ordinance of St. Louis, where, "for the salvation of his own soul and those of his ancestors, he releases to all Christians a third part of what was owing by them to Jews." Not content with such edicts, the kings of France sometimes banished the whole nation from their dominions, seizing their effects at the same time; and a season of alternative severity and toleration continued till, under Charles VI., they were finally expelled from the kingdom, where they never afterwards possessed any legal settlement. They were expelled from England under Edward I., and never obtained any legal permission to reside till the time of Cromwell. This decline of the Jews was owing to the transference of their trade in money to other hands. In the early part of the thirteenth century the merchants of Lombardy and of the south of France took up the business of remitting money by bills of exchange, and of making profit upon loans. The utility of this was found so great, especially by the Italian clergy, who thus in an easy man-

[1] Greg. Turon., l. iv.

ner drew the income of their transalpine benefices, that, in spite of much obloquy, the Lombard usurers established themselves in every country, and the general progress of commerce wore off the bigotry that had obstructed their reception. A distinction was made between moderate and exorbitant interest; and though the casuists did not acquiesce in this legal regulation, yet it satisfied, even in superstitious times, the consciences of provident traders.[8] The Italian bankers were frequently allowed to farm the customs in England, as a security, perhaps, for loans which were not very punctually repaid. In 1345 the Bardi at Florence, the greatest company in Italy, became bankrupt, Edward III. owing them, in principal and interest, 900,000 gold florins. Another, the Peruzzi, failed at the same time, being creditors to Edward for 600,000 florins. The King of Sicily owed 100,000 florins to each of these bankers. Their failure involved, of course, a multitude of Florentine citizens, and was a heavy misfortune to the state.

§ 10. The earliest bank of deposit, instituted for the accommodation of private merchants, is said to have been that of Barcelona, in 1401. The banks of Venice and Genoa were of a different description. Although the former of these two has the advantage of greater antiquity, having been formed, as we are told, in the twelfth century, yet its early history is not so clear as that of Genoa, nor its political importance so remarkable, however similar might be its origin. During the wars of Genoa in the fourteenth century, she had borrowed large sums of private citizens, to whom the revenues were pledged for repayment. The republic of Florence had set a recent, though not a very encouraging, example of a public loan, to defray the expense of her war against Mastino della Scala, in 1336. The chief mercantile firms, as well as individual citizens, furnished money on an assignment of the taxes, receiving fifteen per cent. interest, which appears to have been above the rate of private usury. The state was not unreasonably considered a worse debtor than some of her citizens, for in a few years these loans were consolidated into a general fund, or *monte*, with some deduction from the

[8] Usury was looked upon with horror by our English divines long after the Reformation.

One species of usury, and that of the highest importance to commerce, was always permitted, on account of the risk that attended it. This was marine insurance, which could not have existed until money was considered, in itself, as a source of profit. The earliest regulations on the subject of insurance are those of Barcelona in 1433; but the practice was, of course, earlier than these, though not of great antiquity. It is not mentioned in the "Consolate del Mare," nor in any of the Hanseatic laws of the fourteenth century.

capital and a great diminution of interest; so that an original debt of one hundred florins sold only for twenty-five. But I have not found that these creditors formed at Florence a corporate body, or took any part, as such, in the affairs of the republic. The case was different at Genoa. As a security, at least, for their interest, the subscribers to public loans were permitted to receive the produce of the taxes by their own collectors, paying the excess into the treasury. The number and distinct classes of these subscribers becoming at length inconvenient, they were formed, about the year 1407, into a single corporation, called the Bank of St. George, which was from that time the sole national creditor and mortgagee. The government of this was intrusted to eight protectors. It soon became almost independent of the state. Every Senator, on his admission, swore to maintain the privileges of the bank, which were confirmed by the pope, and even by the emperor. The bank interposed its advice in every measure of government, and generally, as is admitted, to the public advantage. It equipped armaments at its own expense, one of which subdued the island of Corsica; and this acquisition, like those of our great Indian corporation, was long subject to a company of merchants, without any interference of the mother country.

§ 11. The increasing wealth of Europe, whether derived from internal improvement or foreign commerce, displayed itself in more expensive consumption, and greater refinements of domestic life. But these effects were for a long time very gradual. It is not till the latter half of the thirteenth century that an accelerated impulse appears to be given to society. The just government and suppression of disorder under St. Louis, and the peaceful temper of his brother Alfonso, count of Toulouse and Poitou, gave France leisure to avail herself of her admirable fertility. England, that to a soil not greatly inferior to that of France united the inestimable advantage of an insular position, and was invigorated, above all, by her free constitution and the steady industriousness of her people, rose with a pretty uniform motion from the time of Edward I. Italy, though the better days of freedom had passed away in most of her republics, made a rapid transition from simplicity to refinement. "In those times," says a writer about the year 1300, speaking of the age of Frederick II., "the manners of the Italians were rude. A man and his wife ate off the same plate. There were no wooden-handled knives, nor more than one or two drinking-cups in a house. Candles of wax or tallow were un-

known; a servant held a torch during supper. The clothes of men were of leather unlined: scarcely any gold or silver was seen on their dress. The common people ate flesh but three times a week, and kept their cold meat for supper. Many did not drink wine in summer. A small stock of corn seemed riches. The portions of women were small; their dress, even after marriage, was simple. The pride of men was to be well provided with arms and horses; that of the nobility to have lofty towers, of which all the cities in Italy were full. But now frugality has been changed for sumptuousness; every thing exquisite is sought after in dress—gold, silver, pearls, silks, and rich furs. Foreign wines and rich meats are required. Hence usury, rapine, fraud, tyranny,"[9] etc. This passage is supported by other testimonies nearly of the same time. The conquest of Naples by Charles of Anjou, in 1266, seems to have been the epoch of increasing luxury throughout Italy. His Provençal knights, with their plumed helmets and golden collars, the chariot of his queen covered with blue velvet and sprinkled with lilies of gold, astonished the citizens of Naples. Provence had enjoyed a long tranquillity, the natural source of luxurious magnificence; and Italy, now liberated from the yoke of the em pire, soon reaped the same fruit of a condition more easy and peaceful than had been her lot for several ages.

Throughout the fourteenth century there continued to be a rapid but steady progression in England of what we may denominate elegance, improvement, or luxury; and if this was for a time suspended in France, it must be ascribed to the unusual calamities which befell that country under Philip of Valois and his son. Just before the breaking out of the English wars an excessive fondness for dress is said to have distinguished not only the higher ranks, but the burghers, whose foolish emulation at least indicates their easy circumstances. Modes of dress hardly, perhaps, deserve our notice on their own account; yet, so far as their universal prevalence was a symptom of diffused wealth, we should not overlook either the invectives bestowed by the clergy on the fantastic extravagances of fashion, or the sumptuary laws by which it was endeavored to restrain them.

The principle of sumptuary laws was partly derived from the small republics of antiquity, which might, perhaps, require that security for public spirit and equal rights—partly from the austere and injudicious theory of religion disseminated by the clergy. These prejudices united to render all

[9] Ricobaldus Ferrarensis, apud Murat. Dissert., 28 Francisc. Pippinus, ibidem.

increase of general comforts odious under the name of luxury; and a third motive, more powerful than either, the jealousy with which the great regard any thing like imitation in those beneath them, co-operated to produce a sort of restrictive code in the laws of Europe. Some of those regulations are more ancient; but the chief part were enacted, both in France and England, during the fourteenth century, extending to expenses of the table as well as apparel. The first statute of this description in our own country was, however, repealed the next year;[10] and subsequent provisions were entirely disregarded by a nation which valued liberty and commerce too much to obey laws conceived in a spirit hostile to both. Laws, indeed, designed by those governments to restrain the extravagance of their subjects may well justify the severe indignation which Adam Smith has poured upon all such interference with private expenditure.

Towards the latter part of the fourteenth century there was more refinement and luxury in Italy than in any other part of Europe. In France the burghers, and even the inferior gentry, were for the most part in a state of poverty at this period, which they concealed by an affectation of ornament; while our English yeomanry and tradesmen were more anxious to invigorate their bodies by a generous diet than to dwell in well-furnished houses, or to find comfort in cleanliness and elegance. The German cities, however, had acquired with liberty the spirit of improvement and industry. From the time that Henry V. admitted their artisans to the privileges of free burghers they became more and more prosperous; while the steadiness and frugality of the German character compensated for some disadvantages arising out of their inland situation. Spire, Nuremberg, Ratisbon, and Augsburg were not, indeed, like the rich markets of London and Bruges, nor could their burghers rival the princely merchants of Italy; but they enjoyed the blessings of competence diffused over a large class of industrious freemen, and in the fifteenth century one of the politest Italians could extol their splendid and well-furnished dwellings, their rich apparel, their easy and affluent mode of living, the security of their rights and just equality of their laws.[11]

[10] 37 Edward III., Rep. 38 Edward III. Several other statutes of a similar nature were passed in this and the ensuing reign. In France, there were sumptuary laws as old as Charlemagne, prohibiting or taxing the use of furs; but the first extensive regulation was under Philip the Fair. These attempts to restrain what can not be restrained continued even down to 1700.

[11] Æneas Sylvius, de Moribus Germanorum. This treatise is an amplified panegyric upon Germany, and contains several curious passages.

§ 12. No chapter in the history of national manners would illustrate so well, if duly executed, the progress of social life as that dedicated to domestic architecture. The fashions of dress and of amusements are generally capricious and irreducible to rule; but every change in the dwellings of mankind, from the rudest wooden cabin to the stately mansion, has been dictated by some principle of convenience, neatness, comfort, or magnificence.

The most ancient buildings which we can trace in this island, after the departure of the Romans, were circular towers of no great size, whereof many remain in Scotland, erected either on a natural eminence or on an artificial mound of earth. Such are Conisborough Castle in Yorkshire, and Castleton in Derbyshire. To the lower chambers of those gloomy keeps there was no admission of light or air except through long narrow loop-holes and an aperture in the roof. Regular windows were made in the upper apartments. Were it not for the vast thickness of the walls, and some marks of attention both to convenience and decoration in these structures, we might be induced to consider them as rather intended for security during the transient inroad of an enemy than for a chieftain's usual residence. They bear a close resemblance, except by their circular form and more insulated situation, to the peels, or square towers of three or four stories, which are still found contiguous to ancient mansion-houses in the northern counties, and seem to have been designed for places of refuge, though many of them were also built for residence.

In course of time, the barons who owned these castles began to covet a more comfortable dwelling. The keep was either much enlarged, or altogether relinquished as a place of residence, except in time of siege; while more convenient apartments were sometimes erected in the tower of entrance, over the great gate-way, which led to the inner ballium, or court-yard. The windows in this class of castles were still little better than loop-holes on the basement story, but in the upper rooms often large and beautifully ornamented, though always looking inward to the court. Edward I. introduced a more splendid and convenient style of castles, containing many habitable towers, with communicating apartments. Conway and Carnarvon will be familiar examples. The next innovation was the castle-palace—of which Windsor, if not quite the earliest, is the most magnificent instance. Alnwick, Naworth, Harewood, Spofforth, Kenilworth, and Warwick, were all built upon this scheme during the fourteenth

century, but subsequent enlargements have rendered caution necessary to distinguish their original remains. The provision for defense became now, however, little more than nugatory; large arched windows, like those of cathedrals, were introduced into halls, and this change in architecture manifestly bears witness to the cessation of baronial wars and the increasing love of splendor in the reign of Edward III.

To these succeeded the castellated houses of the fifteenth century—such as Herstmonceux, in Sussex; Haddon Hall, in Derbyshire; and the older part of Knowle, in Kent.[12] They resembled fortified castles in their strong gate-ways, their turrets and battlements, to erect which a royal license was necessary; but their defensive strength could only have availed against a sudden affray or attempt at forcible dispossession. They were always built round one or two courtyards, the circumference of the first, when they were two, being occupied by the offices and servants' rooms, that of the second by the state apartments. Regular quadrangular houses, not castellated, were sometimes built during the same age, and under Henry VII. became universal in the superior style of domestic architecture. The quadrangular form, as well from security and convenience as from imitation of conventual houses, which were always constructed upon that model, was generally preferred—even where the dwelling-house, as indeed was usual, only took up one side of the inclosure, and the remaining three contained the offices, stables, and farm-buildings, with walls of communication. Several very old parsonages appear to have been built in this manner.[13] A great part of England affords no stone fit for building, and the vast, though unfortunately not inexhaustible, resources of her oak forests were easily applied to less durable and magnificent structures. A frame of massive timber, independent of walls and resembling the inverted hull of a large ship, formed the skeleton, as it were, of an ancient hall—the principal beams springing from the ground naturally curved, and forming a Gothic arch overhead. The intervals of these were filled up with horizontal planks; but in the earlier buildings, at least in some districts, no part of the walls was of stone. Stone houses are, however, mentioned as belonging to citizens of London, even in the reign

[12] The ruins of Herstmonceux are, I believe, tolerably authentic remains of Henry VI.'s age, but only a part of Haddon Hall is of the fifteenth century.

[13] The quadrangular form, however, was not ancient—Aydon, Northumberland. Little Wenham Hall, Suffolk; Markenfield Hall, Yorkshire; and Great Chalfield, Wilts—ranging in date from the latter half of the thirteenth century to the latter half of the fifteenth century—are not quadrangular. Others might be named.

of Henry II.; and, though not often, perhaps, regularly hewn stones, yet those scattered over the soil or dug from flint quarries, bound together with a very strong and durable cement, were employed in the construction of manerial houses, especially in the western counties and other parts where that material is easily procured. Gradually, even in timber buildings, the intervals of the main beams, which now became perpendicular, not throwing off their curved springers till they reached a considerable height, were occupied by stone walls, or, where stone was expensive, by mortar or plaster, intersected by horizontal or diagonal beams, grooved into the principal piers. This mode of building continued for a long time, and is still familiar to our eyes in the older streets of the metropolis and other towns, and in many parts of the country, but it did not come into general use till the reign of Henry VI. The use of brick in building seems to have fallen into comparative disuse; but so simple an art as making bricks can hardly have been lost. We have an instance of an early edifice constructed chiefly of this material in Little Wenham Hall, in Suffolk, which was erected about 1270; but many considerable houses as well as public buildings were erected with bricks during his reign and that of Edward IV., chiefly in the eastern counties, where the deficiency of stone was most experienced. Queen's College and Clare Hall, at Cambridge, and part of Eton College, are subsisting witnesses to the durability of the material as it was then employed.

It is an error to suppose that the English gentry were lodged in stately or even in well-sized houses. Generally speaking, their dwellings were almost as inferior to those of their descendants in capacity as they were in convenience. The usual arrangement consisted of an entrance-passage running through the house, with a hall on one side, a parlor beyond, and one or two chambers above; and on the opposite side, a kitchen, pantry, and other offices. Such was the ordinary manor-house of the fifteenth and sixteenth centuries. Larger structures were erected by men of great estates after the wars of the Roses; but I should conceive it difficult to name a house in England, still inhabited by a gentleman and not belonging to the order of castles, the principal apartments of which are older than the reign of Henry VII. The instances at least must be extremely few.[14]

France by no means appears to have made a greater progress than our own country in domestic architecture. Except

[14] For further details on Domestic Architecture in England, see NOTE I.

fortified castles, I do not find any considerable dwellings mentioned before the reign of Charles VII., and very few of so early a date. Even in Italy, where, from the size of her cities and social refinements of her inhabitants, greater elegance and splendor in building were justly to be expected, the domestic architecture of the Middle Ages did not attain any perfection. In several towns the houses were covered with thatch, and suffered consequently from destructive fires.

The two most essential improvements in architecture during this period, one of which had been missed by the sagacity of Greece and Rome, were chimneys and glass windows. Nothing, apparently, can be more simple than the former; yet the wisdom of ancient times had been content to let the smoke escape by an aperture in the centre of the roof; and a discovery, of which Vitruvius had not a glimpse, was made, perhaps in this country, by some forgotten semi-barbarian. About the middle of the fourteenth century the use of chimneys is distinctly mentioned in England and in Italy; but they are found in several of our castles which bear a much older date.[18] This country seems to have lost very early the art of making glass, which was preserved in France, whence artificers were brought into England to furnish the windows in some new churches in the seventh century. It is said that in the reign of Henry III. a few ecclesiastical buildings had glazed windows. Suger, however, a century before, had adorned his great work, the Abbey of St. Denis, with windows, not only glazed but painted; and I presume that other churches of the same class, both in France and England, especially after the lancet-shaped window had yielded to one of ampler dimensions, were generally decorated in a similar manner. Yet glass is said not to have been employed in the domestic architecture of France before the four-

[18] Mr. Twopeny observes: "There does not appear to be any evidence of the use of chimney-shafts in England prior to the twelfth century. In Rochester Castle, which is in all probability the work of William Corbyl, about 1130, there are complete fire-places with semicircular backs, and a shaft in each jamb, supporting a semicircular arch over the opening, and that is enriched with the zigzag moulding: some of these project slightly from the wall; the flues, however, go only a few feet up in the thickness of the wall, and are then turned out at the back, the apertures being small oblong holes. At the castle, Hedingham, Essex, which is of about the same date, there are fire-places and chimneys of a similar kind. A few years later, the improvement of carrying the flue up the whole height of the wall appears; as at Christ Church, Hants; the keep at Newcastle; Sherborne Castle, etc. The early chimney-shafts are of considerable height, and circular; afterwards they assumed a great variety of forms, and during the fourteenth century they are frequently very short."—Glossary of Ancient Architecture, p. 100, edit. 1845. It is said, too, here that chimneys were seldom used in halls till near the end of the fifteenth century; the smoke took its course, if it pleased, through a hole in the roof.

teenth century; and its introduction into England was probably by no means earlier. Nor, indeed, did it come into general use during the period of the Middle Ages. Glazed windows were considered as movable furniture, and probably bore a high price. When the earls of Northumberland, as late as the reign of Elizabeth, left Alnwick Castle, the windows were taken out of their frames, and carefully laid by.

But if the domestic buildings of the fifteenth century would not seem very spacious or convenient at present, far less would this luxurious generation be content with their internal accommodations. A gentleman's house containing three or four beds was extraordinarily well provided; few, probably, had more than two. The walls were commonly bare, without wainscot or even plaster; except that some great houses were furnished with hangings, and that perhaps hardly so soon as the reign of Edward IV. It is unnecessary to add, that neither libraries of books nor pictures could have found a place among furniture. Silver plate was very rare, and hardly used for the table. A few inventories of furniture that still remain exhibit a miserable deficiency. And this was incomparably greater in private gentlemen's houses than among citizens, and especially foreign merchants. We have an inventory of the goods belonging to Contarini, a rich Venetian trader, at his house in St. Botolph's Lane, A.D. 1481. There appear to have been no less than ten beds, and glass windows are especially noticed as movable furniture. No mention, however, is made of chairs or looking-glasses. If we compare this account, however trifling in our estimation, with a similar inventory of furniture in Skipton Castle, the great honor of the earls of Cumberland, and among the most splendid mansions of the North, not at the same period—for I have not found any inventory of a nobleman's furniture so ancient—but in 1572, after almost a century of continual improvement, we shall be astonished at the inferior provision of the baronial residence. There were not more than seven or eight beds in this great castle; nor had any of the chambers either chairs, glasses, or carpets. It is in this sense, probably, that we must understand Æneas Sylvius, if he meant any thing more than to express a traveller's discontent, when he declares that the kings of Scotland would rejoice to be as well lodged as the second class of citizens at Nuremberg. Few burghers of that town had mansions, I presume, equal to the palaces of Dumferlin or Stirling; but it is not unlikely that they were better furnished.

In the construction of farm-houses and cottages, especially the latter, there have probably been fewer changes; and those it would be more difficult to follow. No building of this class can be supposed to exist of the antiquity to which the present work is confined; and I do not know that we have any document as to the inferior architecture of England so valuable as one which M. de Paulmy has quoted for that of France, though perhaps more strictly applicable to Italy, an illuminated manuscript of the fourteenth century, being a translation of Crescentio's work on agriculture, illustrating the customs and, among other things, the habitations of the agricultural class. According to Paulmy, there is no other difference between an ancient and a modern farm-house than arises from the introduction of tiled roofs. In the original work of Crescentio, a native of Bologna, who composed this treatise on rural affairs about the year 1300, an Italian farm-house, when built at least according to his plan, appears to have been commodious both in size and arrangement. Cottages in England seem to have generally consisted of a single room, without division of stories. Chimneys were unknown in such dwellings till the early part of Elizabeth's reign, when a very rapid and sensible improvement took place in the comforts of our yeomanry and cottagers.

§ 13. It must be remembered that I have introduced this disadvantageous representation of civil architecture as a proof of general poverty and backwardness in the refinements of life. Considered in its higher departments, that art is the principal boast of the Middle Ages. The common buildings, especially those of a public kind, were constructed with skill and attention to durability. The castellated style displays these qualities in great perfection; the means are well adapted to their objects, and its imposing grandeur, though chiefly resulting, no doubt, from massiveness and historical association, sometimes indicates a degree of architectural genius in the conception. But the most remarkable works of this art are the religious edifices erected in the twelfth and three following centuries. These structures, uniting sublimity in general composition with the beauties of variety and form, intricacy of parts, skillful or at least fortunate effects of shadow and light, and in some instances with extraordinary mechanical science, are naturally apt to lead those antiquaries who are most conversant with them into too partial estimates of the times wherein they were founded. They certainly are accustomed to behold the fairest side of

the picture. It was the favorite and most honorable employment of ecclesiastical wealth to erect, to enlarge, to repair, to decorate cathedral and conventual churches. An immense capital must have been expended upon these buildings in England between the Conquest and the Reformation. And it is pleasing to observe how the seeds of genius, hidden as it were under the frost of that dreary winter, began to bud in the first sunshine of encouragement. In the darkest period of the Middle Ages, especially after the Scandinavian incursions into France and England, ecclesiastical architecture, though always far more advanced than any other art, bespoke the rudeness and poverty of the times. It began towards the latter part of the eleventh century, when tranquillity, at least as to former enemies, was restored, and some degree of learning reappeared, to assume a more noble appearance. The Anglo-Norman cathedrals were perhaps as much distinguished above other works of man in their own age, as the more splendid edifices of a later period. The science manifested in them is not, however, very great; and their style, though by no means destitute of lesser beauties, is, upon the whole, an awkward imitation of Roman architecture, or perhaps more immediately of the Saracenic buildings in Spain and those of the lower Greek Empire. But about the middle of the twelfth century this manner began to give place to what is improperly denominated the Gothic architecture; of which the pointed arch, formed by the segments of two intersecting semicircles of equal radius and described about a common diameter, has generally been deemed the essential characteristic. We are not concerned at present to inquire whether this style originated in France or Germany, Italy or England, since it was certainly almost simultaneous in all these countries; nor from what source it was derived—a question of no small difficulty. I would only venture to remark that, whatever may be thought of the origin of the pointed arch, for which there is more than one mode of accounting, we must perceive a very Oriental character in the vast profusion of ornament, especially on the exterior surface, which is as distinguishing a mark of Gothic buildings as their arches, and contributes in an eminent degree both to their beauties and to their defects. This indeed is rather applicable to the later than the earlier stage of architecture, and rather to Continental than English churches. Amiens is in a far more florid style than Salisbury, though a contemporary structure. The Gothic species of architecture is thought by most to have reached its perfection, considered as an object of taste, by the

middle or perhaps the close of the fourteenth century, or at least to have lost something of its excellence by the corresponding part of the next age; an effect of its early and rapid cultivation, since arts appear to have, like individuals, their natural progress and decay. The mechanical execution, however, continued to improve, and is so far beyond the apparent intellectual powers of those times, that some have ascribed the principal ecclesiastical structures to the fraternity of freemasons, depositaries of a concealed and traditionary science. There is probably some ground for this opinion; and the earlier archives of that mysterious association, if they existed, might illustrate the progress of Gothic architecture, and perhaps reveal its origin. The remarkable change into this new style, that was almost contemporaneous in every part of Europe, can not be explained by any local circumstances, or the capricious taste of a single nation.

§ 14. It would be a pleasing task to trace with satisfactory exactness the slow and almost, perhaps, insensible progress of agriculture and internal improvement during the latter period of the Middle Ages. I have already adverted to the wretched condition of agriculture during the prevalence of feudal tenures, as well as before their general establishment. Yet even in the least civilized ages there were not wanting partial encouragements to cultivation, and the ameliorating principle of human industry struggled against destructive revolutions and barbarous disorder. The devastation of war from the fifth to the eleventh century rendered land the least costly of all gifts, though it must ever be the most truly valuable and permanent. Many of the grants to monasteries, which strike us as enormous, were of districts absolutely wasted, which would probably have been reclaimed by no other means. We owe the agricultural restoration of great part of Europe to the monks. They chose, for the sake of retirement, secluded regions, which they cultivated with the labor of their hands. Several charters are extant, granted to convents, and sometimes to laymen, of lands which they had recovered from a desert condition, after the ravages of the Saracens. Some districts were allotted to a body of Spanish colonists, who emigrated, in the reign of Louis the Debonair, to live under a Christian sovereign. Nor is this the only instance of agricultural colonies. Charlemagne transplanted part of his conquered Saxons into Flanders, a country at that time almost unpeopled; and at a much later period there was a remarkable reflux from the same country, or rather from Holland, to the coasts of the Baltic Sea. In the

twelfth century, great numbers of Dutch colonists settled along the whole line between the Ems and the Vistula. They obtained grants of uncultivated land on condition of fixed rents, and were governed by their own laws under magistrates of their own election.

There can not be a more striking proof of the low condition of English agriculture in the eleventh century than is exhibited by Doomsday-book. Though almost all England had been partially cultivated, and we find nearly the same manors, except in the north, which exist at present, yet the value and extent of cultivated ground are inconceivably small. We are lost in amazement at the constant recurrence of two or three carucates in demesne, with other lands occupied by ten or a dozen villeins, valued altogether at forty shillings, as the return of a manor, which now would yield a competent income to a gentleman. If Doomsday-book can be considered as even approaching to accuracy in respect of these estimates, agriculture must certainly have made a very material progress in the four succeeding centuries. By the statute of Merton, in the 20th of Henry III., the lord is permitted to approve, that is, to inclose the waste lands of his manor, provided he leave sufficient common of pasture for the freeholders. Higden, a writer who lived about the time of Richard II., says, in reference to the number of hides and vills of England at the Conquest, that by clearing woods and ploughing up wastes there were many more of each in his age than formerly. And it might be easily presumed, independently of proof, that woods were cleared, marshes drained, and wastes brought into tillage, during the long period that the house of Plantagenet sat on the throne. From manerial surveys indeed and similar instruments, it appears that in some places there was nearly as much ground cultivated in the reign of Edward III. as at the present day. The condition of different counties, however, was very far from being alike, and in general the northern and western parts of England were the most backward.

The culture of arable land was very imperfect. Fleta remarks, in the reign of Edward I. or II., that unless an acre yielded more than six bushels of corn, the farmer would be a loser, and the land yield no rent. And Sir John Cullum, from very minute accounts, has calculated that nine or ten bushels were a full average crop on an acre of wheat. An amazing excess of tillage accompanied, and partly, I suppose, produced, this imperfect cultivation. In Hawsted, for example, under Edward I., there were thirteen or fourteen hundred acres of arable, and only forty-five of meadow ground. A similar dis-

proportion occurs almost invariably in every account we possess. This seems inconsistent with the low price of cattle. But we must recollect that the common pasture, often the most extensive part of a manor, is not included, at least by any specific measurement, in these surveys. The rent of land differed of course materially; sixpence an acre seems to have been about the average for arable land in the thirteenth century, though meadow was at double or treble that sum. But the landlords were naturally solicitous to augment a revenue that became more and more inadequate to their luxuries. They grew attentive to agricultural concerns, and perceived that a high rate of produce, against which their less enlightened ancestors had been used to clamor, would bring much more into their coffers than it took away. The exportation of corn had been absolutely prohibited. But the statute of the 15th of Henry VI., c. 2, reciting that "on this account farmers and others who use husbandry can not sell their corn but at a low price, to the great damage of the realm," permits it to be sent anywhere but to the king's enemies, so long as the quarter of wheat shall not exceed 6*s.* 8*d.* in value, or that of barley 3*s.*

The price of wool was fixed in the thirty-second year of the same reign at a minimum, below which no person was suffered to buy it, though he might give more—a provision neither wise nor equitable, but obviously suggested by the same motive. Whether the rents of land were augmented in any degree through these measures, I have not perceived; their great rise took place in the reign of Henry VIII., or rather afterwards. The usual price of land under Edward IV. seems to have been ten years' purchase.

In Italy the rich Lombard plains, still more fertilized by irrigation, became a garden, and agriculture seems to have reached the excellence which it still retains. The constant warfare, indeed, of neighboring cities is not very favorable to industry; and upon this account we might incline to place the greatest territorial improvement of Lombardy at an era rather posterior to that of her republican government; but from this it primarily sprung; and without the subjugation of the feudal aristocracy, and that perpetual demand upon the fertility of the earth which an increasing population of citizens produced, the valley of the Po would not have yielded more to human labor than it had done for several preceding centuries. Though Lombardy was extremely populous in the thirteenth and fourteenth centuries, she exported large quantities of corn. But whatever mysterious influence of soil or climate has scattered the seeds of death on the west-

ern regions of Tuscany, had not manifested itself in the Middle Ages. Among uninhabitable plains, the traveller is struck by the ruins of innumerable castles and villages, monuments of a time when pestilence was either unfelt, or had at least not forbade the residence of mankind. Volterra, whose deserted walls look down upon that tainted solitude, was once a small but free republic. Siena, round whom, though less depopulated, the malignant influence hovers, was once almost the rival of Florence. So melancholy and apparently irresistible a decline of culture and population through physical causes, as seems to have gradually overspread that portion of Italy, has not, perhaps, been experienced in any other part of Europe, unless we except Iceland.

The Italians of the fourteenth century seem to have paid some attention to an art of which, both as related to cultivation and to architecture, our own forefathers were almost entirely ignorant. Crescentius dilates upon horticulture, and gives a pretty long list of herbs, both esculent and medicinal. His notions about the ornamental department are rather beyond what we should expect, and I do not know that his scheme of a flower-garden could be much amended. His general arrangements, which are minutely detailed with evident fondness for the subject, would of course appear too formal at present; yet less so than those of subsequent times; and though acquainted with what is called the topiary art, that of training or cutting trees into regular figures, he does not seem to run into its extravagance. Regular gardens, according to Paulmy, were not made in France till the sixteenth or even seventeenth century; yet one is said to have existed at the Louvre of much older construction. England, I believe, had nothing of the ornamental kind, unless it were some trees regularly disposed in the orchard of a monastery. Even the common horticultural art for culinary purposes, though not entirely neglected, since the produce of gardens is sometimes mentioned in ancient deeds, had not been cultivated with much attention. The esculent vegetables now most in use were introduced in the reign of Elizabeth, and some sorts a great deal later.

§ 15. I should leave this slight survey of economical history still more imperfect were I to make no observation on the relative values of money. Without something like precision in our notions upon this subject, every statistical inquiry becomes a source of confusion and error.

In the reigns of Henry III. and Edward I., previously to the first debasement of the coin by the latter in 1301, the ordinary price of a quarter of wheat appears to have been

about four shillings, and that of barley and oats in proportion. A sheep was rather sold high at a shilling, and an ox might be reckoned at ten or twelve. The value of cattle is, of course, dependent upon their breed and condition, and we have unluckily no early account of butcher's meat; but we can hardly take a less multiple than about thirty for animal food, and eighteen or twenty for corn, in order to bring the prices of the thirteenth century to a level with those of the present day. Combining the two, and setting the comparative dearness of cloth against the cheapness of fuel and many other articles, we may, perhaps, consider any given sum under Henry III. and Edward I. as equivalent in general command over commodities to about twenty-four or twenty-five times their nominal value at present. Under Henry VI. the coin had lost one-third of its weight in silver, which caused a proportional increase of money prices; but, so far as I can perceive, there had been no diminution in the value of that metal. We have not much information as to the fertility of the mines which supplied Europe during the Middle Ages; but it is probable that the drain of silver towards the East, joined to the ostentatious splendor of courts, might fully absorb the usual produce. By the statute 15 Henry VI., c. 2, the price up to which wheat might be exported is fixed at 6*s.* 8*d.*, a point no doubt above the average; and the private documents of that period, which are sufficiently numerous, lead to a similar result.[16] Sixteen will be a proper multiple when we would bring the general value of money in this reign to our present standard.[17]

[16] These will chiefly be found in Sir F. Eden's table of prices: the following may be added from the account-book of a convent between 1415 and 1425. Wheat varied from 4*s.* to 6*s.*—barley from 3*s.* 2*d.* to 4*s.* 10*d.*—oats from 1*s.* 8*d.* to 2*s.* 4*d.*—oxen from 12*s.* to 16*s.*—sheep from 1*s.* 2*d.* to 1*s.* 4*d.*—butter ½*d.* per lb.—eggs twenty-five for 1*d.*—cheese ½*d.* per lb.—Lansdowne MSS., vol. i., Nos. 28 and 29. These prices do not always agree with those given in other documents of equal authority in the same period; but the value of provisions varied in different counties, and still more so in different seasons of the year.

[17] I insert the following comparative table of English money from Sir Frederick Eden:

	Value of pound sterling, present money.	Proportion.		Value of pound sterling, present money.	Proportion.
	£. *s.* *d.*			£. *s.* *d.*	
Conquest.....1066	2 18 1¼	2·906	34 Henry VIII..1543	1 3 8½	1·168
28 Edward I.....1300	2 17 5	2·871	36 Henry VIII..1545	0 13 11½	0·698
18 Edward III....1344	2 12 5½	2·622	37 Henry VIII..1546	0 9 8¾	0·466
20 Edward III....1346	2 11 8	2·583	5 Edward VI....1551	0 4 7½	0·232
27 Edward III....1353	2 6 6	2·325	6 Edward VI....1552	1 0 6½	1·028
13 Henry IV.....1412	1 18 9	1·937	1 Mary.....1553	1 0 5½	1·024
4 Edward IV....1464	1 11 0	1·55	2 Elizabeth.....1560	1 0 8	1·033
1 Henry VIII....1527	1 7 6¾	1·378	43 Elizabeth.....1601	1 0 0	1·000

But after ascertaining the proportional values of money at different periods by a comparison of the prices in several of the chief articles of expenditure, which is the only fair process, we shall sometimes be surprised at incidental facts of this class which seem irreducible to any rule. These difficulties arise not so much from the relative scarcity of particular commodities, which it is for the most part easy to explain, as from the change in manners and in the usual mode of living. We have reached in this age so high a pitch of luxury that we can hardly believe or comprehend the frugality of ancient times, and have in general formed mistaken notions as to the habits of expenditure which then prevailed. Accustomed to judge of feudal and chivalrous ages by works of fiction, or by historians who embellished their writings with accounts of occasional festivals and tournaments, and sometimes inattentive enough to transfer the manners of the seventeenth to the fourteenth century, we are not at all aware of the usual simplicity with which the gentry lived under Edward I. or even Henry VI. They drank little wine; they had no foreign luxuries; they rarely or never kept male servants except for husbandry; their horses, as we may guess by the price, were indifferent; they seldom travelled beyond their county. And even their hospitality must have been greatly limited, if the value of manors were really no greater than we find it in many surveys. Twenty-four seems a sufficient multiple when we would raise a sum mentioned by a writer under Edward I. to the same real value expressed in our present money, but an income of £10 or £20 was reckoned a competent estate for a gentleman; at least the lord of a single manor would seldom have enjoyed more. A knight who possessed £150 per annum passed for extremely rich. Yet this was not equal in command over commodities to £4000 at present. But this income was comparatively free from taxation, and its expenditure lightened by the services of his villeins. Such a person, however, must have been among the most opulent of country gentlemen. Sir John Fortescue speaks of five pounds a year as "a fair living for a yeoman," a class of whom he is not at all inclined to diminish the importance. So, when Sir William Drury, one of the richest men in Suffolk, bequeaths, in 1493, fifty marks to each of his daughters, we must not imagine that this was of greater value than four or five hundred pounds at this day, but remark the family pride and want of ready money which induced country gentlemen to leave their younger children in poverty. Or, if we read that the ex-

pense of a scholar at the university in 1514 was but five pounds annually, we should err in supposing that he had the liberal accommodation which the present age deems indispensable, but consider how much could be afforded for about sixty pounds, which will be not far from the proportion. And what would a modern lawyer say to the following entry in the church-warden's accounts of St. Margaret, Westminster, for 1476: "Also paid to Roger Fylpott, learned in the law, for his counsel-giving, 3*s.* 8*d.*, *with fourpence for his dinner?*" Though fifteen times the fee might not seem altogether inadequate at present, five shillings would hardly furnish the table of a barrister, even if the fastidiousness of our manners would admit of his accepting such a dole. But this fastidiousness, which considers certain kinds of remuneration degrading to a man of liberal condition, did not prevail in those simple ages. It would seem rather strange that a young lady should learn needle-work and good breeding in a family of superior rank, paying for her board; yet such was the laudable custom of the fifteenth and even sixteenth centuries, as we perceive by the Paston Letters, and even later authorities.

There is one very unpleasing remark which every one who attends to the subject of prices will be induced to make—that the laboring classes, especially those engaged in agriculture, were better provided with the means of subsistence in the reign of Edward III. or of Henry VI. than they are at present. In the fourteenth century Sir John Cullum observes a harvest-man had fourpence a day, which enabled him in a week to buy a comb of wheat; but to buy a comb of wheat a man must now (1784) work ten or twelve days. So, under Henry VI., if meat was at a farthing and a half the pound, which I suppose was about the truth, a laborer earning threepence a day, or eighteen-pence in the week, could buy a bushel of wheat at six shillings the quarter, and twenty-four pounds of meat for his family. Several acts of Parliament regulate the wages that might be paid to laborers of different kinds. Thus the statute of laborers in 1350 fixed the wages of reapers during harvest at threepence a day without diet, equal to five shillings at present; that of 23 Henry VI., c. 12, in 1444, fixed the reapers' wages at fivepence, and those of common workmen in building at 3½*d.*, equal to 6*s.* 8*d.* and 4*s.* 8*d.*; that of 11 Henry VII., c. 22, in 1496, leaves the wages of laborers in harvest as before, but rather increases those of ordinary workmen. The yearly wages of a chief hind or shepherd by the act of 1444 were

£1 4*s.*, equivalent to about £20; those of a common servant in husbandry, 18*s.* 4*d.*, with meat and drink: they were somewhat augmented by the statute of 1496. Yet, although these wages are regulated as a maximum by acts of Parliament, which may naturally be supposed to have had a view rather towards diminishing than enhancing the current rate, I am not fully convinced that they were not rather beyond it; private accounts at least do not always correspond with these statutable prices. And it is necessary to remember that the uncertainty of employment, natural to so imperfect a state of husbandry, must have diminished the laborers' means of subsistence. Extreme dearth, not more owing to adverse seasons than to improvident consumption, was frequently endured. But after every allowance of this kind I should find it difficult to resist the conclusion that, however the laborer has derived benefit from the cheapness of manufactured commodities and from many inventions of common utility, he is much inferior in ability to support a family to his ancestors three or four centuries ago. I know not why some have supposed that meat was a luxury seldom obtained by the laborer. Doubtless he could not have procured as much as he pleased. But, from the greater cheapness of cattle, as compared with corn, it seems to follow that a more considerable portion of his ordinary diet consisted of animal food than at present. It was remarked by Sir John Fortescue that the English lived far more upon animal diet than their rivals, the French; and it was natural to ascribe their superior strength and courage to this cause. I should feel much satisfaction in being convinced that no deterioration in the state of the laboring classes has really taken place; yet it can not, I think, appear extraordinary to those who reflect that the whole population of England in the year 1377 did not much exceed 2,300,000 souls, about one-fifth of the results upon the last enumeration—an increase with which that of the fruits of the earth can not be supposed to have kept an even pace.

§ 16. The second head to which I referred—the improvements of European society in the latter period of the Middle Ages—comprehends several changes, not always connected with each other, which contributed to inspire a more elevated tone of moral sentiment, or at least to restrain the commission of crimes. The first and perhaps the most important of these, was the gradual elevation of those whom unjust systems of polity had long depressed—of the people itself, as opposed to the small number of rich and noble—by the

abolition or desuetude of domestic and predial servitude, and by the privileges extended to corporate towns. The condition of slavery is, indeed, perfectly consistent with the observance of moral obligations; yet reason and experience will justify the sentence of Homer, that he who loses his liberty loses half his virtue. Those who have acquired, or may hope to acquire, property of their own, are most likely to respect that of others; those whom law protects as a parent are most willing to yield her a filial obedience; those who have much to gain by the good-will of their fellow-citizens are most interested in the preservation of an honorable character. I have been led, in different parts of the present work, to consider these great revolutions in the order of society under other relations than that of their moral efficacy, and it will therefore be unnecessary to dwell upon them; especially as this efficacy is indeterminate, though I think unquestionable, and rather to be inferred from general reflections than capable of much illustration by specific facts.

§ 17. We may reckon in the next place, among the causes of moral improvement, a more regular administration of justice according to fixed laws, and a more effectual police. Whether the courts of judicature were guided by the feudal customs or the Roman law, it was necessary for them to resolve litigated questions with precision and uniformity. Hence a more distinct theory of justice and good faith was gradually apprehended; and the moral sentiments of mankind were corrected, as on such subjects they often require to be, by clearer and better grounded inferences of reasoning. Again, though it can not be said that lawless rapine was perfectly restrained even at the end of the fifteenth century, a sensible amendment had been everywhere experienced. Private warfare, the licensed robbery of feudal manners, had been subjected to so many mortifications by the kings of France, and especially by St. Louis, that it can hardly be traced beyond the fourteenth century. In Germany and Spain it lasted longer; but the various associations for maintaining tranquillity in the former country had considerably diminished its violence before the great national measure of public peace adopted under Maximilian. Acts of outrage committed by powerful men became less frequent as the executive government acquired more strength to chastise them. We read that St. Louis, the best of French kings, imposed a fine upon the Lord of Vernon for permitting a merchant to be robbed in his territory between sunrise and sunset. For by the customary law, though in general ill ob-

served, the lord was bound to keep the roads free from depredators in the day-time, in consideration of the toll he received from passengers. The same prince was with difficulty prevented from passing a capital sentence on Enguerrand de Coucy, a baron of France, for a murder. Charles the Fair actually put to death a nobleman of Languedoc for a series of robberies, notwithstanding the intercession of the provincial nobility. The towns established a police of their own for internal security, and rendered themselves formidable to neighboring plunderers. Finally, though not before the reign of Louis XI., an armed force was established for the preservation of police. Various means were adopted in England to prevent robberies, which indeed were not so frequently perpetrated as they were on the Continent, by men of high condition. None of these, perhaps, had so much efficacy as the frequent sessions of judges under commissions of jail delivery. But the spirit of this country has never brooked that coercive police which can not exist without breaking in upon personal liberty by irksome regulations and discretionary exercise of power; the sure instrument of tyranny, which renders civil privileges at once nugatory and insecure, and by which we should dearly purchase some real benefits connected with its slavish discipline.

§ 18. I have some difficulty in adverting to another source of moral improvement during this period—the growth of religious opinions adverse to those of the Established Church—both on account of its great obscurity, and because many of these heresies were mixed up with an excessive fanaticism. But they fixed themselves so deeply in the hearts of the inferior and more numerous classes, they bore, generally speaking, so immediate a relation to the state of manners, and they illustrate so much that more visible and eminent revolution which ultimately rose out of them in the sixteenth century, that I must reckon these among the most interesting phenomena in the progress of European society.

Many ages elapsed during which no remarkable instance occurs of a popular deviation from the prescribed line of belief; and pious Catholics console themselves by reflecting that their forefathers, in those times of ignorance, slept at least the sleep of orthodoxy, and that their darkness was interrupted by no false lights of human reasoning. But from the twelfth century this can no longer be their boast. An inundation of heresy broke in that age upon the Church, which no persecution was able thoroughly to repress, till it finally overspread half the surface of Europe. Of this re-

ligious innovation we must seek the commencement in a different part of the globe. The Manicheans afford an eminent example of that durable attachment to a traditional creed which so many ancient sects, especially in the East, have cherished through the vicissitudes of ages, in spite of persecution and contempt. Their plausible and widely extended system had been in early times connected with the name of Christianity, however incompatible with its doctrines and its history. After a pretty long obscurity, the Manichean theory revived with some modification in the western parts of Armenia, and was propagated in the eighth and ninth centuries by a sect denominated *Paulicians*. Their tenets are not to be collected with absolute certainty from the mouths of their adversaries, and no apology of their own survives. There seems, however, to be sufficient evidence that the Paulicians, though professing to acknowledge and even to study the apostolical writings, ascribed the creation of the world to an evil deity, whom they supposed also to be the author of the Jewish law, and consequently rejected all the Old Testament. Believing, with the ancient Gnostics, that our Saviour was clothed on earth with an impassive celestial body, they denied the reality of his death and resurrection.[18] These errors exposed them to a long and cruel persecution, during which a colony of exiles was planted by one of the Greek emperors in Bulgaria. From this settlement they silently promulgated their Manichean creed over the western regions of Christendom. A large part of the commerce of those countries with Constantinople was carried on for several centuries by the channel of the Danube. This opened an immediate intercourse with the Paulicians, who may be traced up that river through Hungary and Bavaria, or sometimes taking the route of Lombardy into Switzerland and France. In the last country, and especially in its southern and eastern provinces, they became conspicuous under a variety of names, such as

[18] The most authentic account of the Paulicians is found in a little treatise of Petrus Siculus, who lived about 870, under Basil the Macedonian. He had been employed on an embassy to Tephrica, the principal town of these heretics, so that he might easily be well informed; and, though he is sufficiently bigoted, I do not see any reason to question the general truth of his testimony, especially as it tallies so well with what we learn of the predecessors and successors of the Paulicians. Petrus Siculus enumerates six Paulician heresies. 1. They maintained the existence of two deities—the one evil, and the creator of this world; the other good, called πατὴρ ἐκουράνιος, the author of that which is to come. 2. They refused to worship the Virgin, and asserted that Christ brought his body from heaven. 3. They rejected the Lord's Supper. 4. And the adoration of the Cross. 5. They denied the authority of the Old Testament, but admitted the New, except the epistles of St. Peter, and, perhaps, the Apocalypse. 6. They did not acknowledge the order of priests.

There seems every reason to suppose that the Paulicians, notwithstanding their mistakes, were endowed with sincere and zealous piety, and studious of the Scriptures.

Catharists, Picards, Paterins, but above all, *Albigenses*. It is beyond a doubt that many of these sectaries owed their origin to the Paulicians; the appellation of Bulgarians was distinctively bestowed upon them; and, according to some writers, they acknowledged a primate or patriarch resident in that country. The tenets ascribed to them by all contemporary authorities coincide so remarkably with those held by the Paulicians, and in earlier times by the Manicheans, that I do not see how we can reasonably deny what is confirmed by separate and uncontradicted testimonies, and contains no intrinsic want of probability.

But though the derivation of these heretics, called Albigenses, from Bulgaria is sufficiently proved, it is by no means to be concluded that all who incurred the same imputation either derived their faith from the same country, or had adopted the Manichean theory of the Paulicians. From the very invectives of their enemies, and the acts of the Inquisition, it is manifest that almost every shade of heterodoxy was found among these dissidents, till it vanished in a simple protestation against the wealth and tyranny of the clergy. Those who were absolutely free from any taint of Manicheism are properly called *Waldenses;* a name perpetually confounded in later times with that of Albigenses, but distinguishing a sect probably of separate origin, and at least of different tenets. These, according to the majority of writers, took their appellation from Peter Waldo, a merchant of Lyons, the parent, about the year 1160, of a congregation of seceders from the Church, who spread very rapidly over France and Germany. According to others, the original Waldenses were a race of uncorrupted shepherds, who in the valleys of the Alps had shaken off, or perhaps never learned, the system of superstition on which the Catholic Church depended for its ascendency I am not certain whether their existence can be distinctly traced beyond the preaching of Waldo, but it is well known that the proper seat of the Waldenses, or Vaudois, has long continued to be in certain valleys of Piedmont. These pious and innocent sectaries, of whom the very monkish historians speak well, appear to have nearly resembled the modern Moravians. They had ministers of their own appointment, and denied the lawfulness of oaths and of capital punishment. In other respects their opinions probably were not far removed from those usually called Protestant. A simplicity of dress, and especially the use of wooden sandals, was affected by this people.

I have already had occasion to relate the severe persecu-

tion which nearly exterminated the Albigenses of Languedoc at the close of the twelfth century, and involved the counts of Toulouse in their ruin. The Catharists, a fraternity of the same Paulician origin, more dispersed than the Albigenses, had previously sustained a similar trial. Their belief was certainly a compound of strange errors with truth; but it was attended by qualities of a far superior lustre to orthodoxy, by a sincerity, a piety, and a self-devotion that almost purified the age in which they lived. It is always important to perceive that these high moral excellences have no necessary connection with speculative truths; and upon this account I have been more disposed to state explicitly the real Manicheism of the Albigenses; especially as Protestant writers, considering all the enemies of Rome as their friends, have been apt to place the opinions of these sectaries in a very false light. In the course of time, undoubtedly, the system of their Paulician teachers would have yielded, if the inquisitors had admitted the experiment, to a more accurate study of the Scriptures, and to the knowledge which they would have imbibed from the Church itself. And, in fact, we find that the peculiar tenets of Manicheism died away after the middle of the thirteenth century, although a spirit of dissent from the established creed broke out in abundant instances during the two subsequent ages.

We are in general deprived of explicit testimonies in tracing the revolutions of popular opinion. Much must, therefore, be left to conjecture; but I am inclined to attribute a very extensive effect to the preaching of these heretics. They appear in various countries nearly during the same period—in Spain, Lombardy, Germany, Flanders, and England, as well as in France. Thirty unhappy persons, convicted of denying the sacraments, are said to have perished at Oxford by cold and famine in the reign of Henry II. In every country the new sects appear to have spread chiefly among the lower people, which, while it accounts for the imperfect notice of historians, indicates a more substantial influence upon the moral condition of society than the conversion of a few nobles or ecclesiastics.

But even where men did not absolutely enlist under the banners of any new sect, they were stimulated by the temper of their age to a more zealous and independent discussion of their religious system. A curious illustration of this is furnished by one of the letters of Innocent III. He had been informed by the Bishop of Metz, as he states to the clergy of the diocese, that no small multitude of laymen and

women, having procured a translation of the gospels, epistles of St. Paul, the Psalter, Job, and other books of Scripture, to be made for them into French, meet in secret conventicles to hear them read and preach to each other, avoiding the company of those who do not join in their devotion, and, having been reprimanded for this by some of their parish priests, have withstood them, alleging reasons from the Scriptures why they should not be so forbidden. Some of them, too, deride the ignorance of their ministers, and maintain that their own books teach them more than they could learn from the pulpit, and that they can express it better. Although the desire of reading the Scriptures, Innocent proceeds, is rather praiseworthy than reprehensible, yet they are to be blamed for frequenting secret assemblies, for usurping the office of preaching, deriding their own ministers, and scorning the company of such as do not concur in their novelties. He presses the bishop and chapter to discover the author of this translation, which could not have been made without a knowledge of letters, and what were his intentions, and what degree of orthodoxy and respect for the Holy See those who used it possessed. This letter of Innocent III., however, considering the nature of the man, is sufficiently temperate and conciliatory. It seems not to have answered its end; for in another letter he complains that some members of this little association continued refractory, and refused to obey either the bishop or the pope.[19]

In the eighth and ninth centuries, when the Vulgate had ceased to be generally intelligible, there is no reason to suspect any intention in the Church to deprive the laity of the Scriptures. Translations were freely made into the vernacular languages, and, perhaps, read in churches, although the acts of saints were generally deemed more instructive. Louis the Debonair is said to have caused a German version of the New Testament to be made. Otfrid, in the same century, rendered the gospels, or rather abridged them, into German verse. This work is still extant, and is in several respects an object of curiosity. In the eleventh or twelfth century we find translations of the Psalms, Job, Kings, and the Maccabees into French. But after the diffusion of heretical opinions, or, what was much the same thing, of free inquiry, it became expedient to secure the orthodox faith from lawless interpretation. Accordingly, the Council of Toulouse,

[19] Opera Innocent. III., pp. 468, 537. A translation of the Bible had been made by direction of Peter Waldo; but whether this used in Lorrain was the same does not appear. Metz was full of the Vaudois, as we find by other authorities.

in 1229, prohibited the laity from possessing the Scriptures; and this precaution was frequently repeated upon subsequent occasions.[20]

The ecclesiastical history of the thirteenth or fourteenth centuries teems with new sectaries and schismatics, various in their aberrations of opinion, but all concurring in detestation of the Established Church. They endured severe persecutions with a sincerity and firmness which in any cause ought to command respect.

But in general we find an extravagant fanaticism among them; and I do not know how to look for any amelioration of society from the Franciscan seceders, who quibbled about the property of things consumed by use, or from the mystical visionaries of different appellations, whose moral practice was sometimes more than equivocal. Those who feel any curiosity about such subjects, which are by no means unimportant, as they illustrate the history of the human mind, will find them treated very fully by Mosheim. But the original sources of information are not always accessible in this country, and the research would, perhaps, be more fatiguing than profitable.

I shall, for an opposite reason, pass lightly over the great revolution in religious opinion wrought in England by Wicliffe, which will generally be familiar to the reader from our common historians. Nor am I concerned to treat of theological inquiries, or to write a history of the Church. Considered in its effects upon manners—the sole point which these pages have in view—the preaching of this new sect certainly produced an extensive reformation. But their virtues were by no means free from some unsocial qualities, in which, as well as in their superior attributes, the Lollards bear a very close resemblance to the Puritans of Elizabeth's reign; a moroseness that proscribed all cheerful amusements, an uncharitable malignity that made no distinction in condemning the established clergy, and a narrow prejudice that applied the rules of the Jewish law to modern institutions. Some of their principles were far more dangerous to the good or-

[20] The Anglo-Saxon versions are deserving of particular remark. It has been said that our Church maintained the privilege of having part of the daily service in the mother tongue. "Even the mass itself," says Lappenberg, "was not read entirely in Latin."—Hist. of England, vol. i., p. 202. This, however, is denied by Lingard, whose authority is probably superior.—Hist. of Ang.-Sax. Church, i., 307. But he allows that the Epistle and Gospel were read in English, which implies an authorized translation. And we may adopt in a great measure Lappenberg's proposition, which follows the above passage: "The numerous versions and paraphrases of the Old and New Testament made those books known to the laity and more familiar to the clergy."

der of society, and can not justly be ascribed to the Puritans, though they grew afterwards out of the same soil. Such was the notion, which is imputed also to the Albigenses, that civil magistrates lose their right to govern by committing sin, or, as it was quaintly expressed in the seventeenth century, that dominion is founded in grace. These extravagances, however, do not belong to the learned and politic Wicliffe, however they might be adopted by some of his enthusiastic disciples. Fostered by the general ill-will towards the Church, his principles made vast progress in England, and, unlike those of earlier sectaries, were embraced by men of rank and civil influence. Notwithstanding the check they sustained by the sanguinary law of Henry IV., it is highly probable that multitudes secretly cherished them down to the era of the Reformation.

From England the spirit of religious innovation was propagated into Bohemia; for though John Huss was very far from embracing all the doctrinal system of Wicliffe, it is manifest that his zeal had been quickened by the writings of that reformer. Inferior to the Englishman in ability, but exciting greater attention by his constancy and sufferings, as well as by the memorable war which his ashes kindled, the Bohemian martyr was even more eminently the precursor of the Reformation. But still, regarding these dissensions merely in a temporal light, I can not assign any beneficial effect to the schism of the Hussites, at least in its immediate results, and in the country where it appeared. Though some degree of sympathy with their cause is inspired by resentment at the ill faith of their adversaries, and by the associations of civil and religious liberty, we can not estimate the Taborites, and other sectaries of that description, but as ferocious and desperate fanatics. Perhaps, beyond the confines of Bohemia, more substantial good may have been produced by the influence of its reformation, and a better tone of morals inspired into Germany. But I must again repeat that upon this obscure and ambiguous subject I assert nothing definitely, and little with confidence. The tendencies of religious dissent in the four ages before the Reformation appear to have generally conduced towards the moral improvement of mankind; and facts of this nature occupy a far greater space in a philosophical view of society during that period than we might at first imagine; but every one who is disposed to prosecute this inquiry will assign their character according to the result of his own investigations.

§ 19. But the best school of moral discipline which the

Middle Ages afforded was the institution of chivalry. There is something, perhaps, to allow for the partiality of modern writers upon this interesting subject; yet our most skeptical criticism must assign a decisive influence to this great source of human improvement. The more deeply it is considered, the more we shall become sensible of its importance.

There are, if I may so say, three powerful spirits which have from time to time moved over the face of the waters, and given a predominant impulse to the moral sentiments and energies of mankind. These are the spirits of liberty, of religion, and of honor. It was the principal business of chivalry to animate and cherish the last of these three. And whatever high magnanimous energy the love of liberty or religious zeal has ever imparted was equalled by the exquisite sense of honor which this institution preserved.

It appears probable that the custom of receiving arms at the age of manhood with some solemnity was of immemorial antiquity among the nations that overthrew the Roman Empire; for it is mentioned by Tacitus to have prevailed among their German ancestors; and his expressions might have been used with no great variation to describe the actual ceremonies of knighthood. There was even in that remote age a sort of public trial as to the fitness of the candidate, which, though perhaps confined to his bodily strength and activity, might be the germ of that refined investigation which was thought necessary in the perfect stage of chivalry. Proofs, though rare and incidental, might be adduced to show that in the time of Charlemagne, and even earlier, the sons of monarchs at least did not assume manly arms without a regular investiture. And in the eleventh century it is evident that this was a general practice.[21]

This ceremony, however, would perhaps of itself have done little towards forming that intrinsic principle which characterized the genuine chivalry. But in the reign of Charlemagne we find a military distinction that appears, in fact as well as in name, to have given birth to that institution. Certain feudal tenants, and I suppose also allodial proprietors, were bound to serve on horseback, equipped with the coat of mail. These were called Caballarii, from which the word chevaliers is an obvious corruption. But he who fought on horseback, and had been invested with peculiar arms in a solemn

[21] Nihil neque publicæ neque privatæ rei nisi armati agunt. Sed arma sumere non ante cuiquam moris, quàm civitas suffecturum probaverit. Tum in ipso concilio, vel principum aliquis, vel pater, vel propinquus, scuto framèaque juvenem ornant; hæc apud eos toga, hic primus juventæ honos; ante hoc domûs pars videntur, mox reipublicæ.—De Moribus German., c. 13.

manner, wanted nothing more to render him a knight. Chivalry therefore may, in a general sense, be referred to the age of Charlemagne. We may, however, go farther, and observe that these distinctive advantages above ordinary combatants were probably the sources of that remarkable valor and that keen thirst for glory which became the essential attributes of a knightly character. For confidence in our skill and strength is the usual foundation of courage; it is by feeling ourselves able to surmount common dangers that we become adventurous enough to encounter those of a more extraordinary nature, and to which more glory is attached. The reputation of superior personal prowess, so difficult to be attained in the course of modern warfare, and so liable to erroneous representations, was always within the reach of the stoutest knight, and was founded on claims which could be measured with much accuracy. Such is the subordination and mutual dependence in a modern army, that every man must be content to divide his glory with his comrades, his general, or his soldiers; but the soul of chivalry was individual honor, coveted in so entire and absolute a perfection that it must not be shared with an army or a nation. Most of the virtues it inspired were what we may call independent, as opposed to those which are founded upon social relations. The knights-errant of romance perform their best exploits from the love of renown, or from a sort of abstract sense of justice, rather than from any solicitude to promote the happiness of mankind. If these springs of action are less generally beneficial, they are, however, more connected with elevation of character than the systematical prudence of men accustomed to social life.

In the first state of chivalry, it was closely connected with the military service of fiefs. The Caballarii in the capitularies, the Milites of the eleventh and twelfth centuries, were land-holders who followed their lord or sovereign into the field. A certain value of land was termed in England a knight's fee, or in Normandy feudum loricæ, fief de haubert, from the coat of mail which it entitled and required the tenant to wear; a military tenure was said to be by service in chivalry. To serve as knights, mounted and equipped, was the common duty of vassals; it implied no personal merit, it gave of itself a claim to no civil privileges. But this knight-service founded upon a feudal obligation is to be carefully distinguished from that superior chivalry, in which all was independent and voluntary. The latter, in fact, could hardly flourish in its full perfection till the military service of feudal

tenure began to decline, namely, in the thirteenth century. The origin of this personal chivalry I should incline to refer to the ancient usage of voluntary commendation, which I have mentioned in a former chapter. Men commended themselves, that is, did homage and professed attachment to a prince or lord; generally, indeed, for protection or the hope of reward, but sometimes probably for the sake of distinguishing themselves in his quarrels. When they received pay, which must have been the usual case, they were literally his soldiers, or stipendiary troops. Those who could afford to exert their valor without recompense were like the knights of whom we read in romance, who served a foreign master through love, or thirst of glory, or gratitude. The extreme poverty of the lower nobility, arising from the subdivision of fiefs, and the politic generosity of rich lords, made this connection as strong as that of territorial dependence. A younger brother, leaving the paternal estate, in which he took a slender share, might look to wealth and dignity in the service of a powerful count. Knighthood, which he could not claim as his legal right, became the object of his chief ambition. It raised him in the scale of society, equalling him in dress, in arms, and in title, to the rich land-holders. As it was due to his merit, it did much more than equal him to those who had no pretensions but from wealth; and the territorial knights became by degrees ashamed of assuming the title till they could challenge it by real desert.

This class of noble and gallant cavaliers, serving commonly for pay, but on the most honorable footing, became far more numerous through the Crusades; a great epoch in the history of European society. In these wars, as all feudal service was out of the question, it was necessary for the richer barons to take into their pay as many knights as they could afford to maintain; speculating, so far as such motives operated, on an influence with the leaders of the expedition, and on a share of plunder, proportioned to the number of their followers. During the period of the Crusades we find the institution of chivalry acquire its full vigor as an order of personal nobility; and its original connection with feudal tenure, if not altogether effaced, became in a great measure forgotten in the splendor and dignity of the new form which it wore.

The Crusaders, however, changed in more than one respect the character of chivalry. Before that epoch it appears to have had no particular reference to religion. We can hardly perceive, indeed, why the assumption of arms to be used in butchering mankind should be treated as a religious cere-

mony. The clergy, to do them justice, constantly opposed the private wars in which the courage of those ages wasted itself; and all bloodshed was subject in strictness to a canonical penance. But the purposes for which men bore arms in a crusade so sanctified their use, that chivalry acquired the character as much of a religious as a military institution. For many centuries the recovery of the Holy Land was constantly at the heart of brave and superstitious nobility; and every knight was supposed at his creation to pledge himself, as occasion should arise, to that cause. Meanwhile, the defense of God's law against infidels was his primary and standing duty. A knight, whenever present at mass, held the point of his sword before him while the gospel was read, to signify his readiness to support it. Writers of the Middle Ages compare the knightly to the priestly character in an elaborate parallel, and the investiture of the one was supposed analogous to the ordination of the other. The ceremonies upon this occasion were almost wholly religious. The candidate passed nights in prayer among priests in a church; he received the sacraments; he entered into a bath, and was clad with a white robe, in allusion to the presumed purification of his life; his sword was solemnly blessed; every thing, in short, was contrived to identify his new condition with the defense of religion, or at least of the Church.

To this strong tincture of religion which entered into the composition of chivalry from the twelfth century, was added another ingredient equally distinguishing. A great respect for the female sex had always been a remarkable characteristic of the Northern nations. The German women were high-spirited and virtuous, qualities which might be causes or consequences of the veneration with which they were regarded. I am not sure that we could trace very minutely the condition of women for the period between the subversion of the Roman Empire and the first Crusade; but apparently man did not grossly abuse his superiority; and in point of civil rights, and even as to the inheritance of property, the two sexes were placed perhaps as nearly on a level as the nature of such warlike societies would admit. There seems, however, to have been more roughness in the social intercourse between the sexes than we find in later periods. The spirit of gallantry, which became so animating a principle of chivalry, must be ascribed to the progressive refinement of society during the 12th and two succeeding centuries. In a rude state of manners, as among the lower people in all ages, woman has not full scope to display those fascinating graces by which

nature has designed to counterbalance the strength and energy of mankind. Even where those jealous customs that degrade alike the two sexes have not prevailed, her lot is domestic seclusion. Nor is she fit to share in the boisterous pastimes of drunken merriment to which the intercourse of an unpolished people is confined. But as a taste for the more elegant enjoyments of wealth arises—a taste which it is always her policy and her delight to nourish—she obtains an ascendency at first in the lighter hour, and from thence in the serious occupations of life. She chases, or brings into subjection, the god of wine—a victory which might seem more ignoble were it less difficult, and calls in the aid of divinities more propitious to her ambition. The love of becoming ornament is not, perhaps, to be regarded in the light of vanity; it is rather an instinct which woman has received from nature to give effect to those charms that are her defense; and when commerce began to minister more effectually to the wants of luxury, the rich furs of the North, the gay silks of Asia, the wrought gold of domestic manufacture, illumined the halls of chivalry, and cast, as if by the spell of enchantment, that ineffable grace over beauty which the choice and arrangement of dress is calculated to bestow. Courtesy had always been the proper attribute of knighthood; protection of the weak its legitimate duty; but these were heightened to a pitch of enthusiasm when woman became their object. There was little jealousy shown in the treatment of that sex, at least in France, the fountain of chivalry; they were present at festivals, at tournaments, and sat promiscuously in the halls of their castle. The romance of Perceforest (and romances have always been deemed good witnesses as to manners) tells of a feast where eight hundred knights had each of them a lady eating off his plate. For to eat off the same plate was a usual mark of gallantry or friendship.

Next, therefore, or even equal to devotion, stood gallantry among the principles of knighthood. But all comparison between the two was saved by blending them together. The love of God and the ladies was enjoined as a single duty. He who was faithful and true to his mistress was held sure of salvation in the theology of castles, though not of cloisters.

The gallantry of those ages, which was very often adulterous, had certainly no right to profane the name of religion; but its union with valor was at least more natural, and became so intimate that the same word has served to express both qualities. In the French and English wars especially,

the knights of each country brought to that serious conflict the spirit of romantic attachment which had been cherished in the hours of peace. They fought at Poitiers or Verneuil as they had fought at tournaments, bearing over their armor scarfs and devices as the livery of their mistresses, and asserting the paramount beauty of her they served in vaunting challenges towards the enemy. Thus in the middle of a keen skirmish at Cherbourg, the squadrons remained motionless while one knight challenged to a single combat the most amorous of the adversaries. Such a defiance was soon accepted, and the battle only recommenced when one of the champions had lost his life for his love. In the first campaign of Edward's war some young English knights wore a covering over one eye, vowing, for the sake of their ladies, never to see with both till they should have signalized their prowess in the field. These extravagances of chivalry are so common that they form part of its general character, and prove how far a course of action which depends upon the impulses of sentiment may come to deviate from common sense.

But the morals of chivalry, we can not deny, were not pure. In the amusing fictions which seem to have been the only popular reading of the Middle Ages, there reigns a licentious spirit, not of that slighter kind which is usual in such compositions, but indicating a general dissoluteness in the intercourse of the sexes. This has often been noticed of Boccaccio and the early Italian novelists; but it equally characterized the tales and romances of France, whether metrical or in prose, and all the poetry of the Troubadours. The violation of marriage vows passes in them for an incontestable privilege of the brave and the fair; and an accomplished knight seems to have enjoyed as undoubted prerogatives, by general consent of opinion, as were claimed by the brilliant courtiers of Louis XV.

But neither that emulous valor which chivalry excited, nor the religion and gallantry which were its animating principles, alloyed as the latter were by the corruption of those ages, could have rendered its institution materially conducive to the moral improvement of society. There were, however, excellences of a very high class which it equally encouraged. Three virtues may particularly be noticed as essential in the estimation of mankind to the character of a knight—loyalty, courtesy, and munificence.

(i.) *Loyalty.*—The first of these, in its original sense, may be defined fidelity to engagements; whether actual prom-

ises, or such tacit obligations as bound a vassal to his lord and a subject to his prince. It was applied also, and in the utmost strictness, to the fidelity of a lover towards the lady he served. Breach of faith, and especially an express promise, was held a disgrace that no valor could redeem. False, perjured, disloyal, recreant, were the epithets which he must be compelled to endure who had swerved from a plighted engagement even towards an enemy. This is one of the most striking changes produced by chivalry. Treachery, the usual vice of savage as well as corrupt nations, became infamous during the vigor of that discipline. As personal rather than national feeling actuated its heroes, they never felt that hatred, much less that fear of their enemies, which blind men to the heinousness of ill faith. In the wars of Edward III., originating in no real animosity, the spirit of honorable as well as courteous behavior towards the foe seems to have arrived at its highest point. Though avarice may have been the primary motive of ransoming prisoners instead of putting them to death, their permission to return home on the word of honor in order to procure the stipulated sum—an indulgence never refused—could only be founded on experienced confidence in the principles of chivalry.

(ii.) *Courtesy.*—A knight was unfit to remain a member of the order if he violated his faith; he was ill acquainted with its duties if he proved wanting in courtesy. This word expressed the most highly refined good-breeding, founded less upon a knowledge of ceremonious politeness—though this was not to be omitted—than on the spontaneous modesty, self-denial, and respect for others, which ought to spring from his heart. Besides the grace which this beautiful virtue threw over the habits of social life, it softened down the natural roughness of war, and gradually introduced that indulgent treatment of prisoners which was almost unknown to antiquity. Instances of this kind are continual in the later period of the Middle Ages. The behavior of Edward III. to Eustace de Ribaumont, after the capture of Calais, and that, still more exquisitely beautiful, of the Black Prince to his royal prisoner at Poitiers, are such eminent instances of chivalrous virtue, that I omit to repeat them only because they are so well known. Those great princes, too, might be imagined to have soared far above the ordinary track of mankind. But in truth, the knights who surrounded them and imitated their excellences, were only inferior in opportunities of displaying the same virtue.

(iii.) *Munificence.*—Liberality, indeed, and disdain of mon-

ey, might be reckoned, as I have said, among the essential virtues of chivalry. All the romances inculcate the duty of scattering their wealth with profusion, especially towards minstrels, pilgrims, and the poorer members of their own order. The last, who were pretty numerous, had a constant right to succor from the opulent; the castle of every lord who respected the ties of knighthood was open with more than usual hospitality to the traveller whose armor announced his dignity, though it might also conceal his poverty.

Valor, loyalty, courtesy, munificence, formed collectively the character of an accomplished knight, so far as was displayed in the ordinary tenor of his life, reflecting these virtues as an unsullied mirror. Yet something more was required for the perfect idea of chivalry, and enjoined by its principles; an active sense of justice, an ardent indignation against wrong, a determination of courage to its best end, the prevention or redress of injury. It grew up as a salutary antidote in the midst of poisons, while scarce any law but that of the strongest obtained regard, and the rights of territorial property, which are only rights as they conduce to general good, became the means of general oppression. The real condition of society, it has sometimes been thought, might suggest stories of knight-errantry, which were wrought up into the popular romances of the Middle Ages. A baron, abusing the advantage of an inaccessible castle in the fastnesses of the Black Forest or the Alps, to pillage the neighborhood and confine travellers in his dungeon, though neither a giant nor a Saracen, was a monster not less formidable, and could perhaps as little be destroyed without the aid of disinterested bravery. Knight-errantry, indeed, as a profession, can not rationally be conceived to have had any existence beyond the precincts of romance. Yet there seems no improbability in supposing that a knight, journeying through uncivilized regions in his way to the Holy Land, or to the court of a foreign sovereign, might find himself engaged in adventures not very dissimilar to those which are the theme of romance. We can, not indeed, expect to find any historical evidence of such incidents.

The characteristic virtues of chivalry bear so much resemblance to those which Eastern writers of the same period extol, that I am a little disposed to suspect Europe of having derived some improvement from imitation of Asia. Though the Crusades began in abhorrence of infidels, this sentiment wore off in some degree before their cessation; and the reg-

ular intercourse of commerce, sometimes of alliance, between the Christians of Palestine and the Saracens, must have removed part of the prejudice, while experience of their enemy's courage and generosity in war would with those gallant knights serve to lighten the remainder. The romancers expatiate with pleasure on the merits of Saladin, who actually received the honor of knighthood from Hugh of Tabaria, his prisoner. An ancient poem, entitled the "Order of Chivalry," is founded upon this story, and contains a circumstantial account of the ceremonies, as well as duties, which the institution required. One or two other instances of a similar kind bear witness to the veneration in which the name of knight was held among the Eastern nations. And certainly the Mohammedan chieftains were for the most part abundantly qualified to fulfill the duties of European chivalry. Their manners had been polished and courteous, while the Western kingdoms were comparatively barbarous.

The principles of chivalry were not, I think, naturally productive of many evils; for it is unjust to class those acts of oppression or disorder among the abuses of knighthood which were committed in spite of its regulations, and were only prevented by them from becoming more extensive. But some bad consequences may be more fairly ascribed to the very nature of chivalry. I have already mentioned the dissoluteness which almost unavoidably resulted from the prevailing tone of gallantry. And yet we sometimes find in the writings of those times a spirit of pure but exaggerated sentiment; and the most fanciful refinements of passion are mingled by the same poets with the coarsest immorality. An undue thirst for military renown was another fault that chivalry must have nourished; and the love of war, sufficiently pernicious in any shape, was more founded, as I have observed, on personal feelings of honor, and less on public spirit, than in the citizens of free states. A third reproach may be made to the character of knighthood, that it widened the separation between the different classes of society, and confirmed that aristocratical spirit of high birth by which the large mass of mankind were kept in unjust degradation. Compare the generosity of Edward III. towards Eustace de Ribaumont at the siege of Calais with the harshness of his conduct towards the citizens.

There is perhaps enough in the nature of this institution and its congeniality to the habits of a warlike generation to account for the respect in which it was held throughout Europe. But several collateral circumstances served to invig-

orate its spirit. Besides the powerful efficacy with which the poetry and romance of the Middle Ages stimulated those susceptible minds which were alive to no other literature, we may enumerate four distinct causes tending to the promotion of chivalry.

The first of these was the regular scheme of education, according to which the sons of gentlemen from the age of seven years were brought up in the castles of superior lords, where they at once learned the whole discipline of their future profession, and imbibed its emulous and enthusiastic spirit. This was an inestimable advantage to the poorer nobility, who could hardly otherwise have given their children the accomplishments of their station. From seven to fourteen these boys were called pages or varlets; at fourteen they bore the name of esquire. They were instructed in the management of arms, in the art of horsemanship, to exercises of strength and activity. They became accustomed to obedience and courteous demeanor, serving their lord or lady in offices which had not yet become derogatory to honorable birth, and striving to please visitors, and especially ladies, at the ball or banquet. Thus placed in the centre of all that could awaken their imaginations, the creed of chivalrous gallantry, superstition, or honor must have made indelible impressions. Panting for the glory which neither their strength nor the established rules permitted them to anticipate, the young scions of chivalry attended their masters to the tournament, and even to the battle, and riveted with a sigh the armor they were forbidden to wear.

It was the constant policy of sovereigns to encourage this institution, which furnished them with faithful supports, and counteracted the independent spirit of feudal tenure. Hence they displayed a lavish magnificence in festivals and tournaments, which may be reckoned a second means of keeping up the tone of chivalrous feeling. The kings of France and England held solemn or plenary courts at the great festivals, or at other times, where the name of knight was always a title to admittance; and the masque of chivalry, if I may use the expression, was acted in pageants and ceremonies fantastical enough in our apprehension, but well calculated for those heated understandings. Here the peacock and the pheasant, birds of high fame in romance, received the homage of all true knights. The most singular festival of this kind was that celebrated by Philip, duke of Burgundy, in 1453. In the midst of the banquet a pageant was introduced representing the calamitous state of religion, in con-

sequence of the recent capture of Constantinople. This was followed by the appearance of a pheasant, which was laid before the duke, and to which the knights present addressed their vows to undertake a crusade, in the following very characteristic preamble: "I swear before God my Creator, in the first place, and the glorious Virgin his mother, and next, before the ladies and the pheasant." Tournaments were a still more powerful incentive to emulation. These may be considered to have arisen about the middle of the eleventh century; for though every martial people have found diversion in representing the image of war, yet the name of tournaments, and the laws that regulated them, can not be traced any higher. Every scenic performance of modern times must be tame in comparison of these animating combats. At a tournament the space inclosed within the lists was surrounded by sovereign princes and their noblest barons, by knights of established renown, and all that rank and beauty had most distinguished among the fair. Covered with steel, and known only by their emblazoned shield, or by the favors of their mistresses, a still prouder bearing, the combatants rushed forward to a strife without enmity, but not without danger. Though their weapons were pointless, and sometimes only of wood; though they were bound by the laws of tournaments to strike only upon the strong armor of the trunk, or, as it was called, between the four limbs, those impetuous conflicts often terminated in wounds and death. The Church uttered her excommunications in vain against so wanton an exposure to peril; but it was more easy for her to excite than to restrain that martial enthusiasm. Victory in a tournament was little less glorious, and perhaps at the moment more exquisitely felt, than in the field, since no battle could assemble such witnesses of valor. "Honor to the sons of the brave!" resounded amidst the din of martial music from the lips of the minstrels, as the conqueror advanced to receive the prize from his queen or his mistress; while the surrounding multitude acknowledged in his prowess of that day an augury of triumphs that might in more serious contests be blended with those of his country.

Both honorary and substantial privileges belonged to the condition of knighthood, and had of course a material tendency to preserve its credit. A knight was distinguished abroad by his crested helmet, his weighty armor, whether of mail or plate, bearing his heraldic coat, by his gilded spurs, his horse barded with iron, or clothed in housing of

gold; at home, by richer silks and more costly furs than were permitted to squires, and by the appropriated color of scarlet. He was addressed by titles of more respect. Many civil officers, by rule or usage, were confined to his order. But perhaps its chief privilege was to form one distinct class of nobility, extending itself throughout great part of Europe, and almost independent, as to its rights and dignities, of any particular sovereign. Whoever had been legitimately dubbed a knight in one country became, as it were, a citizen of universal chivalry, and might assume most of its privileges in any other. Nor did he require the act of a sovereign to be thus distinguished. It was a fundamental principle that any knight might confer the order; responsible only in his own reputation if he used lightly so high a prerogative. But as all the distinctions of rank might have been confounded if this right had been without limit, it was an equally fundamental rule that it could only be exercised in favor of gentlemen.

The privileges annexed to chivalry were of peculiar advantage to the vavassors, or inferior gentry, as they tended to counterbalance the influence which territorial wealth threw into the scale of their feudal suzerains. Knighthood brought these two classes nearly to a level; and it is owing perhaps in no small degree to this institution that the lower nobility saved themselves, notwithstanding their poverty, from being confounded with the common people.

Lastly, the customs of chivalry were maintained by their connection with military service. After armies, which we may call comparatively regular, had superseded in a great degree the feudal militia, princes were anxious to bid high for the service of knights, the best equipped and bravest warriors of the time, on whose prowess the fate of battles was for a long period justly supposed to depend. War brought into relief the generous virtues of chivalry, and gave lustre to its distinctive privileges. The rank was sought with enthusiastic emulation through heroic achievements to which, rather than to mere wealth and station, it was considered to belong. In the wars of France and England, by far the most splendid period of this institution, a promotion of knights followed every success, besides the innumerable cases where the same honor rewarded individual bravery. It may here be mentioned that an honorary distinction was made between knights-bannerets and bachelors. The former were the richest and best accompanied. No man could properly be a banneret unless he possessed a certain estate, and

could bring a certain number of lances into the field. His distinguishing mark was the square banner, carried by a squire at the point of his lance; while the knight-bachelor had only the coronet or pointed pendant. When a banneret was created, the general cut off this pendant to render the banner square. But this distinction, however it elevated the banneret, gave him no claim to military command, except over his own dependents or men-at-arms. Chandos was still a knight-bachelor when he led part of the prince of Wales's army into Spain. He first raised his banner at the battle of Navarette; and the narration that Froissart gives of the ceremony will illustrate the manners of chivalry and the character of that admirable hero, the conqueror of Du Guesclin and pride of English chivalry, whose fame with posterity has been a little overshadowed by his master's laurels. What seems more extraordinary is, that mere squires had frequently the command over knights. Proofs of this are almost continual in Froissart. But the vast estimation in which men held the dignity of knighthood led them sometimes to defer it for great part of their lives, in hope of signalizing their investiture by some eminent exploit.

These appear to have been the chief means of nourishing the principles of chivalry among the nobility of Europe. But notwithstanding all encouragement, it underwent the usual destiny of human institutions. St. Palaye, to whom we are indebted for so vivid a picture of ancient manners, ascribes the decline of chivalry in France to the profusion with which the order was lavished under Charles VI., to the establishment of the companies of ordonnance by Charles VII., and to the extension of knightly honors to lawyers, and other men of civil occupation, by Francis I. But the real principle of decay was something different from these three subordinate circumstances, unless so far as it may bear some relation to the second. It was the invention of gunpowder that eventually overthrew chivalry. From the time when the use of fire-arms became tolerably perfect the weapons of former warfare lost their efficacy, and physical force was reduced to a very subordinate place in the accomplishments of a soldier. The advantages of a disciplined infantry became more sensible; and the lancers, who continued till almost the end of the sixteenth century to charge in a long line, felt the punishment of their presumption and indiscipline. Even in the wars of Edward III. the disadvantageous tactics of chivalry must have been perceptible; but the military art had not been sufficiently studied to overcome the prejudices

of men eager for individual distinction. Tournaments became less frequent; and, after the fatal accident of Henry II., were entirely discontinued in France. Notwithstanding the convulsions of the religious wars, the sixteenth century was more tranquil than any that had preceded; and thus a large part of the nobility passed their lives in pacific habits, and, if they assumed the honors of chivalry, forgot their natural connection with military prowess. This is far more applicable to England, where, except from the reign of Edward III. to that of Henry VI., chivalry, as a military institution, seems not to have found a very congenial soil. To these circumstances, immediately affecting the military condition of nations, we must add the progress of reason and literature, which made ignorance discreditable even in a soldier, and exposed the follies of romance to a ridicule which they were very ill calculated to endure.

The spirit of chivalry left behind it a more valuable successor. The character of knight gradually subsided in that of gentleman; and the one distinguishes European society in the sixteenth and seventeeth centuries, as much as the other did in the preceding ages. A jealous sense of honor, less romantic, but equally elevated, a ceremonious gallantry and politeness, a strictness in devotional observances, a high pride of birth and feeling of independence upon any sovereign for the dignity it gave, a sympathy for martial honor, though more subdued by civil habits, are the lineaments which prove an indisputable descent. The cavaliers of Charles I. were genuine successors of Edward's knights; and the resemblance is much more striking if we ascend to the civil wars of the League. Time has effaced much also of this gentlemanly, as it did before of the chivalrous, character. From the latter part of the seventeenth century its vigor and purity have undergone a tacit decay, and yielded, perhaps, in every country to increasing commercial wealth, more diffused instruction, the spirit of general liberty in some, and of servile obsequiousness in others, the modes of life in great cities, and the levelling customs of social intercourse.

§ 20. It is now time to pass to a very different subject. The third head under which I classed the improvements of society during the four last centuries of the Middle Ages was that of literature. But I must apprise the reader not to expect any general view of literary history, even in the most abbreviated manner. Such an epitome would not only be necessarily superficial, but foreign in many of its details to the purposes of this chapter, which, attempting to develop

the circumstances that gave a new complexion to society, considers literature only so far as it exercised a general and powerful influence. I shall, therefore, confine myself to four points—the study of civil law; the institution of universities; the application of modern languages to literature, and especially to poetry; and the revival of ancient learning.

§ 21. (1.) THE STUDY OF CIVIL LAW.—The Roman law had been nominally preserved ever since the destruction of the Empire; and a great portion of the inhabitants of France and Spain, as well as Italy, were governed by its provisions. But this was a mere compilation from the Theodosian Code, which itself contained only the more recent laws promulgated after the establishment of Christianity, with some fragments from earlier collections. It was made by order of Alaric, king of the Visigoths, about the year 500, and it is frequently confounded with the Theodosian Code by writers of the Dark Ages. The Code of Justinian, reduced into system after the separation of the two former countries from the Greek empire, never obtained any authority in them; nor was it received in the part of Italy subject to the Lombards. But that this body of laws was absolutely unknown in the West during any period seems to have been too hastily supposed. Some of the more eminent ecclesiastics, as Hincmar and Ivon of Chartres, occasionally refer to it, and bear witness to the regard which the Roman Church had uniformly paid to its decisions.

The revival of the study of jurisprudence, as derived from the laws of Justinian, has generally been ascribed to the discovery made of a copy of the Pandects at Amalfi, in 1135, when that city was taken by the Pisans. This fact, though not improbable, seems not to rest upon sufficient evidence. But its truth is the less material, as it appears to be unequivocally proved that the study of Justinian's system had recommenced before that era. Early in the twelfth century a professor named Irnerius opened a school of civil law at Bologna, where he commented, if not on the Pandects, yet on the other books, the Institutes and Code, which were sufficient to teach the principles and inspire the love of that comprehensive jurisprudence. The study of law, having thus revived, made a surprising progress; within fifty years Lombardy was full of lawyers, on whom Frederick Barbarossa and Alexander III., so hostile in every other respect, conspired to shower honors and privileges. The schools of Bologna were pre-eminent throughout this century for legal learning. There seem also to have been sem-

inaries at Modena and Mantua; nor was any considerable city without distinguished civilians. In the next age they became still more numerous, and their professors more conspicuous; and universities arose at Naples, Padua, and other places, where the Roman law was the object of peculiar regard.

The fame of this renovated jurisprudence spread very rapidly from Italy over other parts of Europe. Students flocked from all parts of Bologna; and some eminent masters of that school repeated its lessons in distant countries. One of these, Placentinus, explained the Digest at Montpellier before the end of the twelfth century; and the collection of Justinian soon came to supersede the Theodosian Code in the dominions of Toulouse. Its study continued to flourish in the universities of both these cities; and hence the Roman law, as it is exhibited in the system of Justinian, became the rule of all tribunals in the southern provinces of France. Its authority in Spain is equally great, or at least is only disputed by that of the canonists; and it forms the acknowledged basis of decision in all the Germanic tribunals, sparingly modified by the ancient feudal customaries, which the jurists of the empire reduce within narrow bounds. In the northern parts of France, where the legal standard was sought in local customs, the civil law met naturally with less regard. But the Code of St. Louis borrows from that treasury many of its provisions, and it was constantly cited in pleadings before the Parliament of Paris, either as obligatory by way of authority, or at least as written wisdom, to which great deference was shown. Yet its study was long prohibited in the University of Paris, from a disposition of the popes to establish exclusively their decretals, though the prohibition was silently disregarded.

As early as the reign of Stephen, Vacarius, a lawyer of Bologna, taught at Oxford with great success; but the students of scholastic theology opposed themselves, from some unexplained reason, to this new jurisprudence, and his lectures were interdicted. About the time of Henry III. and Edward I. the civil law acquired some credit in England; but a system entirely incompatible with it had established itself in our courts of justice; and the Roman jurisprudence was not only soon rejected, but became obnoxious. Everywhere, however, the clergy combined its study with that of their own canons: it was a maxim that every canonist must be a civilian, and that no one could be a good civilian unless he were also a canonist. In all universities degrees are granted in both laws conjointly; and in all courts of ecclesiastical jurisdiction the

authority of Justinian is cited, when that of Gregory or Clement is wanting.

§ 22. (II.) THE INSTITUTION OF UNIVERSITIES.—The establishment of public schools in France is owing to Charlemagne. At his accession we are assured that no means of obtaining a learned education existed in his dominions; and, in order to restore in some degree the spirit of letters, he was compelled to invite strangers from countries where learning was not so thoroughly extinguished. Alcuin of England, Clement of Ireland, Theodulf of Germany, were the true Paladins who repaired to his court. With the help of these he revived a few sparks of diligence, and established schools in different cities of his empire; nor was he ashamed to be the disciple of that in his own palace, under the care of Alcuin. His two next successors, Louis the Debonair and Charles the Bald, were also encouragers of letters; and the schools of Lyons, Fulda, Corvey, Rheims, and some other cities, might be said to flourish in the ninth century. In these were taught the trivium and quadrivium—a long-established division of sciences: the first, comprehending grammar, or what we now call philology, logic, and rhetoric; the second, music, arithmetic, geometry, and astronomy. But in those ages scarcely any body mastered the latter four; and to be perfect in the three former was exceedingly rare. All those studies, however, were referred to theology, and that in the narrowest manner; music, for example, being reduced to church chanting, and astronomy to the calculation of Easter. Alcuin was, in his old age, against reading the poets; and this discouragement of secular learning was very general; though some, as for instance, Raban, permitted a slight tincture of it, as subsidiary to religious instruction.

About the latter part of the eleventh century a greater ardor for intellectual pursuits began to show itself in Europe, which in the twelfth broke out into a flame. This was manifested in the numbers who repaired to the public academies or schools of philosophy. None of these grew so early into reputation as that of Paris. This can not, indeed, as has been vainly pretended, trace its pedigree to Charlemagne. The first who is said to have read lectures at Paris was Remigius of Auxerre, about the year 900. For the two next centuries the history of this school is very obscure; and it would be hard to prove an unbroken continuity, or at least a dependence and connection, of its professors. In the year 1100 we find William of Champeaux teaching logic, and apparently some higher parts of philosophy, with much credit. But this pre-

ceptor was eclipsed by his disciple, afterwards his rival and adversary, Peter Abelard, to whose brilliant and hardy genius the University of Paris appears to be indebted for its rapid advancement. Abelard was almost the first who awakened mankind in the ages of darkness to a sympathy with intellectual excellence. His bold theories—not the less attractive, perhaps, for treading upon the bounds of heresy—his imprudent vanity, that scorned the regularly acquired reputation of older men, allured a multitude of disciples who would never have listened to an ordinary teacher. It is said that twenty cardinals and fifty bishops had been among his hearers. Even in the wilderness, where he had erected the monastery of Paraclete, he was surrounded by enthusiastic admirers, relinquishing the luxuries, if so they might be called, of Paris for the coarse living and imperfect accommodation which that retirement could afford. But the whole of Abelard's life was the shipwreck of genius, and of genius both the source of his own calamities and unserviceable to posterity. There are few lives of literary men more interesting or more diversified by success and adversity, by glory and humiliation, by the admiration of mankind and the persecution of enemies; nor from which, I may add, more impressive lessons of moral prudence may be derived.[21] One of Abelard's pupils was Peter Lombard, afterwards Archbishop of Paris, and author of a work called the "Book of Sentences," which obtained the highest authority among the scholastic disputants. The resort of students to Paris became continually greater; they appear, before the year 1169, to have been divided into nations;[22] and probably they had an elected rector and voluntary rules of discipline about the same time. This, however, is not decisively proved; but in the last year of the twelfth century they obtained their earliest charter from Philip Augustus.

The foundation of the University of Oxford is commonly ascribed to Alfred, but we have no proof of its existence as a school of learning before the middle of the twelfth century. In the reign of Stephen, Vacarius read lectures there

[21] Abelard's philosophical writings were published in 1836 by M. Cousin. See also the excellent work of M. de Rémusat, in 1845, with the title Abélard, containing a copious account both of the life and writings of that most remarkable man, the father, perhaps, of the theory as to the nature of universal ideas, now so generally known by the name of *conceptualism*.

[22] The faculty of arts in the University of Paris was divided into four nations; those of France, Picardy, Normandy, and England. These had distinct suffrages in the affairs of the university, and consequently, when united, outnumbered the three higher faculties of theology, law, and medicine. In 1260, Henry II. of England offers to refer his dispute with Becket to the provinces of the school of Paris.

upon civil law; and in that of Henry II., or at least of Richard I., Oxford became a very flourishing university, and in 1201, according to Wood, contained 3000 scholars. The earliest charters were granted by John.

If it were necessary to construe the word university in the strict sense of a legal incorporation, Bologna might lay claim to a higher antiquity than either Paris or Oxford. There are a few vestiges of studies pursued in that city even in the eleventh century; but early in the next the revival of the Roman jurisprudence, as has been already noticed, brought a throng of scholars round the chairs of its professors. Frederick Barbarossa in 1158, by his authentic or rescript, entitled Habita, took these under his protection, and permitted them to be tried in civil suits by their own judges. This exemption from the ordinary tribunals, and even from those of the Church, was naturally coveted by other academies: it was granted to the University of Paris by its earliest charter from Philip Augustus, and to Oxford by John. From this time the golden age of universities commenced; and it is hard to say whether they were favored more by their sovereigns or by the See of Rome. Their history, indeed, is full of struggles with the municipal authorities and with the bishops of their several cities, wherein they were sometimes the aggressors, and generally the conquerors. From all parts of Europe students resorted to these renowned seats of learning with an eagerness for instruction which may astonish those who reflect how little of what we now deem useful could be imparted. At Oxford, under Henry III., it is said that there were 30,000 scholars; an exaggeration which seems to imply that the real number was very great. A respectable contemporary writer asserts that there were full 10,000 at Bologna about the same time. I have not observed any numerical statement as to Paris during this age; but there can be no doubt that it was more frequented than any other. At the death of Charles VII. in 1453, it is said to have contained 25,000 students. In the thirteenth century other universities sprang up in different countries—Padua and Naples under the patronage of Frederick II., a zealous and useful friend to letters, Toulouse and Montpellier, Cambridge and Salamanca. Orleans, which had long been distinguished as a school of civil law, received the privileges of incorporation early in the fourteenth century, and Angers before the expiration of the same age. Prague, the earliest and most eminent of German universities, was founded in 1350; a secession from thence of Saxon students, in conse-

quence of the nationality of the Bohemians and the Hussite schism, gave rise to that of Leipsic. The fifteenth century produced several new academical foundations in France and Spain.

A large proportion of scholars in most of those institutions were drawn by the love of science from foreign countries. The chief universities had their own particular departments of excellence. Paris was unrivalled for scholastic theology; Bologna and Orleans, and afterwards Bourges, for jurisprudence; Montpellier for medicine. Though national prejudices, as in the case of Prague, sometimes interfered with this free resort of foreigners to places of education, it was in general a wise policy of government, as well as of the universities themselves, to encourage it. The thirty-fifth article of the peace of Bretigni provides for the restoration of former privileges to students respectively in the French and English universities. Various letters patent will be found in Rymer's collection securing to Scottish as well as French natives a safe passage to their place of education. The English nation, including however the Flemings and Germans, had a separate vote in the faculty of arts at Paris; but foreign students were not, I believe, so numerous in the English academies.

If endowments and privileges are the means of quickening a zeal for letters, they were liberally bestowed in the last three of the Middle Ages. Crevier enumerates fifteen colleges founded in the University of Paris during the thirteenth century, besides one or two of a still earlier date. Two only, or at most three, existed in that age at Oxford, and but one at Cambridge. In the next two centuries these universities could boast, as every one knows, of many splendid foundations, though much exceeded in number by those of Paris. Considered as ecclesiastical institutions, it is not surprising that the universities obtained, according to the spirit of their age, an exclusive cognizance of civil or criminal suits affecting their members. This jurisdiction was, however, local as well as personal, and in reality encroached on the regular police of their cities. At Paris the privilege turned to a flagrant abuse, and gave rise to many scandalous contentions. Still more valuable advantages were those relating to ecclesiastical preferments, of which a large proportion was reserved in France to academical graduates. Something of the same sort, though less extensive, may still be traced in the rules respecting plurality of benefices in our English Church.

§ 23. This remarkable and almost sudden transition from a total indifference to all intellectual pursuits can not be ascribed perhaps to any general causes. The restoration of the civil, and the formation of the canon law, were indeed eminently conducive to it, and a large proportion of scholars in most universities confined themselves to jurisprudence. But the chief attraction to the studious was the new scholastic philosophy. The love of contention, especially with such arms as the art of dialectics supplies to an acute understanding, is natural enough to mankind. That of speculating upon the mysterious questions of metaphysics and theology is not less so. These disputes and speculations, however, appear to have excited little interest till, after the middle of the eleventh century, Roscelin, a professor of logic, revived the old question of the Grecian schools respecting universal ideas, the reality of which he denied. This kindled a spirit of metaphysical discussion, which Lanfranc and Anselm, successively archbishops of Canterbury, kept alive; and in the next century Abelard and Peter Lombard, especially the latter, completed the scholastic system of philosophizing. The logic of Aristotle seems to have been partly known in the eleventh century, although that of Augustin was perhaps in higher estimation; in the twelfth it obtained more decisive influence. His metaphysics, to which the logic might be considered as preparatory, were introduced through translations from the Arabic, and perhaps also from the Greek, early in the ensuing century. This work, condemned at first by the decrees of popes and councils on account of its supposed tendency to atheism, acquired by degrees an influence to which even popes and councils were obliged to yield. The Mendicant Friars, established throughout Europe in the thirteenth century, greatly contributed to promote the Aristotelian philosophy; and its final reception into the orthodox system of the Church may chiefly be ascribed to Thomas Aquinas, the boast of the Dominican order, and certainly the most distinguished metaphysician of the Middle Ages. His authority silenced all scruples as to that of Aristotle, and the two philosophers were treated with equally implicit deference by the later school-men.

This scholastic philosophy, so famous for several ages, has since passed away and been forgotten. The history of literature, like that of empire, is full of revolutions. Our public libraries are cemeteries of departed reputation, and the dust accumulating upon their untouched volumes speaks as forcibly as the grass that waves over the ruins of Babylon. Few,

very few, for a hundred years past, have broken the repose of the immense works of the school-men. Yet we can not deny that Roscelin, Anselm, Abelard, Peter Lombard, Albertus Magnus, Thomas Aquinas, Duns Scotus, and Ockham were men of acute and even profound understandings, the giants of their own generation. Even with the slight knowledge we possess of their tenets, there appear through the cloud of repulsive technical barbarisms rays of metaphysical genius which this age ought not to despise. Thus in the works of Anselm is found the celebrated argument of Des Cartes for the existence of a Deity, deduced from the idea of an infinitely perfect being. One great object that most of the school-men had in view was to establish the principles of natural theology by abstract reasoning. This reasoning was doubtless liable to great difficulties. But it would be difficult to mention any theoretical argument to prove the divine attributes, or any objection capable of being raised against the proof, which we do not find in some of the scholastic philosophers. The most celebrated subjects of discussion, and those on which this class of reasoners were most divided, were the reality of universal ideas, considered as extrinsic to the human mind and the freedom of will. These have not ceased to occupy the thoughts of metaphysicians.

But all discovery of truth by means of these controversies was rendered hopeless by two insurmountable obstacles—the authority of Aristotle and that of the Church. Wherever obsequious reverence is substituted for bold inquiry, truth, if it is not already at hand, will never be attained. The scholastics did not understand Aristotle, whose original writings they could not read; but his name was received with implicit faith. They learned his peculiar nomenclature, and fancied that he had given them realities. The authority of the Church did them still more harm. It has been said, and probably with much truth, that their metaphysics were injurious to their theology. But I must observe in return that their theology was equally injurious to their metaphysics. Their disputes continually turned upon questions either involving absurdity and contradiction, or at best inscrutable by human comprehension. Those who assert the greatest antiquity of the Roman Catholic doctrine as to the real presence allow that both the word and the definition of transubstantiation are owing to the scholastic writers. Their subtleties were not always so well received. They reasoned, at imminent peril of being charged with heresy, which Roscelin, Abelard, Lombard, and Ockham did not escape. In the virulent fac-

tions that arose out of their metaphysical quarrels, either party was eager to expose its adversary to detraction and persecution. The Nominalists were accused, one hardly sees why, with reducing, like Sabellius, the persons of the Trinity to modal distinctions. The Realists, with more pretense, incurred the imputation of holding a language that savored of atheism. In the controversy which the Dominicans and Franciscans, disciples respectively of Thomas Aquinas and Duns Scotus, maintained about grace and free-will, it was of course still more easy to deal in mutual reproaches of heterodoxy. But the school-men were in general prudent enough not to defy the censures of the Church; and the popes, in return for the support they gave to all exorbitant pretensions of the Holy See, connived at this factious wrangling, which threatened no serious mischief, as it did not proceed from any independent spirit of research. Yet, with all their apparent conformity to the received creed, there was, as might be expected from the circumstances, a great deal of real deviation from orthodoxy, and even of infidelity. The scholastic mode of dispute, admitting of no termination and producing no conviction, was the sure cause of skepticism; and the system of Aristotle, especially with the commentaries of Averroes, bore an aspect very unfavorable to natural religion. The Aristotelian philosophy, even in the hands of the Master, was like a barren tree that conceals its want of fruit by profusion of leaves. But the scholastic ontology was much worse. What could be more trifling than disquisitions about the nature of angels, their modes of operation, their means of conversing, or (for these were distinguished) the morning and evening state of their understandings? Into such follies the school-men appear to have launched, partly because there was less danger of running against a heresy in a matter where the Church had defined so little—partly from their presumption, which disdained all inquiries into the human mind, as merely a part of physics—and in no small degree through a spirit of mystical fanaticism, derived from the Oriental philosophy and the later Platonists, which blended itself with the cold-blooded technicalities of the Aristotelian school. But this unproductive waste of the faculties could not last forever. Men discovered that they had given their time for the promise of wisdom, and been cheated in the bargain. What John of Salisbury observes of the Parisian dialecticians in his own time, that after several years' absence he found them not a step advanced, and still employed in urging and parrying the same arguments, was equally appli-

cable to the period of centuries. After three or four hundred years, the scholastics had not untied a single knot, nor added one unequivocal truth to the domain of philosophy. As this became more evident, the enthusiasm for that kind of learning declined; after the middle of the fourteenth century few distinguished teachers arose among the school-men, and at the revival of letters their pretended science had no advocates left but among the prejudiced or ignorant adherents of established systems. How different is the state of genuine philosophy, the zeal for which will never wear out by length of time or change of fashion, because the inquirer, unrestrained by authority, is perpetually cheered by the discovery of truth in researches, which the boundless riches of nature seem to render indefinitely progressive!

Yet, upon a general consideration, the attention paid in the universities to scholastic philosophy may be deemed a source of improvement in the intellectual character, when we compare it with the perfect ignorance of some preceding ages. Whether the same industry would not have been more profitably directed if the love of metaphysics had not intervened, is another question. Philology, or the principles of good taste, degenerated through the prevalence of school-logic. The Latin compositions of the twelfth century are better than those of the three that followed—at least on the northern side of the Alps. I do not, however, conceive that any real correctness of taste or general elegance of style was likely to subsist in so imperfect a condition of society. These qualities seem to require a certain harmonious correspondence in the tone of manners before they can establish a prevalent influence over literature. A more real evil was the diverting of studious men from mathematical science. Early in the twelfth century several persons, chiefly English, had brought into Europe some of the Arabian writings on geometry and physics. In the thirteenth the works of Euclid were commented upon by Campano, and Roger Bacon was fully acquainted with them.[24] Algebra, as far as the Arabians knew it, extending to quadratic equations, was actually in the hands of some Italians at the commencement of the

[24] The resemblance between Roger Bacon and his greater namesake is very remarkable. Whether Lord Bacon ever read the Opus Majus, I know not; but it is singular that his favorite quaint expression, *prærogativæ* scientiarum, should be found in that work, though not used with the same allusion to the Roman comitia. And whoever reads the sixth part of the Opus Majus, upon experimental science, must be struck by it as the prototype, in spirit, of the Novum Organum. The same sanguine and sometimes rash confidence in the effect of physical discoveries, the same fondness for experiment, the same preference of inductive to abstract reasoning, pervade both works.

same age, and preserved for almost three hundred years as a secret, though without any conception of its importance. As abstract mathematics require no collateral aid, they may reach the highest perfection in ages of general barbarism; and there seems to be no reason why, if the course of study had been directed that way, there should not have arisen a Newton or a Laplace, instead of an Aquinas or an Ockham. The knowledge displayed by Roger Bacon and by Albertus Magnus, even in the mixed mathematics, under every disadvantage from the imperfection of instruments and the want of recorded experience, is sufficient to inspire us with regret that their contemporaries were more inclined to astonishment than to emulation. These inquiries, indeed, were subject to the ordeal of fire, the great purifier of books and men; for if the metaphysician stood a chance of being burned as a heretic, the natural philosopher was in not less jeopardy as a magician.

§ 24. (III.) CULTIVATION OF MODERN LANGUAGES.—A far more substantial cause of intellectual improvement was the development of those new languages that sprang out of the corruption of Latin. For three or four centuries after what was called the Romance tongue was spoken in France, there remain but few vestiges of its employment in writing; though we can not draw an absolute inference from our want of proof, and a critic of much authority supposes translations to have been made into it for religious purposes from the time of Charlemagne. During this period the language was split into two very separate dialects, the regions of which may be considered, though by no means strictly, as divided by the Loire. These were called the Langue d'Oil and the Langue d'Oc; or, in more modern terms, the French and Provençal dialects. In the latter of these I know of nothing which can even by name be traced beyond the year 1100. About that time Gregory de Bechada, a gentleman of Limousin, recorded the memorable events of the first Crusade, then recent, in a metrical history of great length. This poem has altogether perished; which, considering the popularity of its subject, would probably not have been the case if it had possessed any merit. But very soon afterwards a multitude of poets, like a swarm of summer insects, appeared in the southern provinces of France. These were the celebrated troubadours, whose fame depends far less on their positive excellence than on the darkness of preceding ages, on the temporary sensation they excited, and their permanent influence on the state of European poetry. From Wil-

liam, count of Poitou, the earliest troubadour on record, who died in 1126, to their extinction, about the end of the next century, there were probably several hundred of these versifiers in the language of Provence, though not always natives of France. Among those poets are reckoned a king of England (Richard I.), two of Aragon, one of Sicily, a dauphin of Auvergne, a count of Foix, a prince of Orange, many noblemen, and several ladies. One can hardly pretend to account for this sudden and transitory love of verse; but it is manifestly one symptom of the rapid impulse which the human mind received in the twelfth century, and contemporaneous with the severer studies that began to flourish in the universities. It was encouraged by the prosperity of Languedoc and Provence, undisturbed, comparatively with other countries, by internal warfare, and disposed by the temper of their inhabitants to feel with voluptuous sensibility the charm of music and amorous poetry. But the tremendous storm that fell upon Languedoc in the crusade against the Albigeois shook off the flowers of Provençal verse; and the final extinction of the fief of Toulouse, with the removal of the counts of Provence to Naples, deprived the troubadours of their most eminent patrons. An attempt was made in the next century to revive them, by distributing prizes for the best composition in the Floral Games of Toulouse, which have sometimes been erroneously referred to a higher antiquity; but it did not establish the name of any Provençal poet. Nor can we deem these fantastical solemnities, styled Courts of Love, where ridiculous questions of metaphysical gallantry were debated by poetical advocates, under the presidency and arbitration of certain ladies, much calculated to bring forward any genuine excellence. They illustrate, however, what is more immediately my own object—the general ardor for poetry and the manners of those chivalrous ages.

§ 25. The great reputation acquired by the troubadours, and panegyrics lavished on some of them by Dante and Petrarch, excited a curiosity among literary men, which has been a good deal disappointed by further acquaintance. Translations from part of this collection, with memorials of the writers, were published by Millot; and we certainly do not often meet with passages in his three volumes which give us any poetical pleasure. The troubadours chiefly confined themselves to subjects of love, or rather gallantry, and to satires (sirventes), which are sometimes keen and spirited. No romances of chivalry, and hardly any tales, are found among their works. There seems a general deficiency of im-

agination, and especially of that vivid description which distinguishes works of genius in the rudest period of society. In the poetry of sentiment, their favorite province, they seldom attain any natural expression, and consequently produce no interest. It must be allowed, however, that we can not judge of the troubadours at a greater disadvantage than through the prose translations of Millot. Their poetry was entirely of that class which is allied to music, and excites the fancy or feelings rather by the power of sound than any stimulancy of imagery and passion. Possessing a flexible and harmonious language, they invented a variety of metrical arrangements, perfectly new to the nations of Europe. The Latin hymns were striking but monotonous, the metre of the northern French unvaried; but in Provençal poetry, almost every length of verse, from two syllables to twelve, and the most intricate disposition of rhymes, were at the choice of the troubadour. The canzoni, the sestine, all the lyric metres of Italy and Spain, were borrowed from his treasury. With such a command of poetical sounds, it was natural that he should inspire delight into ears not yet rendered familiar to the artifices of verse; and even now the fragments of these ancient lays, quoted by M. Sismondi and M. Ginguené, seem to possess a sort of charm that has evaporated in translation. Upon this harmony, and upon the facility with which mankind are apt to be deluded into an admiration of exaggerated sentiment in poetry, they depended for their influence. And however vapid the songs of Provence may seem to our apprehensions, they were undoubtedly the source from which poetry for many centuries derived a great portion of its habitual language.

§ 26. It is probable that the Northern Romance, or what we properly call French, was not formed until the tenth century. Translations of some books of Scripture and acts of saints were made about 1100, or even earlier, and there are French sermons of St. Bernard, from which extracts have been published, in the royal library at Paris. In 1126, a charter was granted by Louis VI. to the city of Beauvais in French. Metrical compositions are in general the first literature of a nation, and, even if no distinct proof could be adduced, we might assume their existence before the twelfth century. There is, however, evidence, not to mention the fragments printed by Le Bœuf, of certain lives of saints translated into French verse by Thibault de Vernon, a canon of Rouen, before the middle of the preceding age. And we are told that Taillefer, a Norman minstrel, recited a song

or romance on the deeds of Roland, before the army of his countrymen, at the battle of Hastings in 1066. Philip de Than, a Norman subject of Henry I., seems to be the earliest poet whose works as well as name have reached us, unless we admit a French translation of the work of one Marbode upon precious stones to be more ancient. This De Than wrote a set of rules for computation of time and an account of different calendars. A happy theme for inspiration, without doubt! Another performance of the same author is a treatise on birds and beasts, dedicated to Adelaide, queen of Henry I. But a more famous votary of the muses was Wace, a native of Jersey, who, about the beginning of Henry II.'s reign, turned Geoffrey of Monmouth's history into French metre. Besides this poem, called le Brut d'Angleterre, he composed a series of metrical histories, containing the transactions of the dukes of Normandy, from Rollo, their great progenitor, who gave name to the Roman de Rou, down to his own age. Other productions are ascribed to Wace, who was at least a prolific versifier, and, if he seem to deserve no higher title at present, has a claim to indulgence, and even to esteem, as having far excelled his contemporaries, without any superior advantages of knowledge. In emulation, however, of his fame, several Norman writers addicted themselves to composing chronicles of devotional treatises in metre. The court of our Norman kings was to the early poets in the Langue d'Oil what those of Arles and Toulouse were to the troubadours. Henry I. was fond enough of literature to obtain the surname of Beauclerc; Henry II. was more indisputably an encourager of poetry; and Richard I. has left compositions of his own in the two dialects spoken in France.

If the poets of Normandy had never gone beyond historical and religious subjects, they would probably have had less claim to our attention than their brethren of Provence. But a different and far more interesting species of composition began to be cultivated in the latter part of the twelfth century. Without entering upon the controverted question as to the origin of romantic fictions, referred by one party to the Scandinavians, by a second to the Arabs, by others to the natives of Brittany, it is manifest that the actual stories, upon which one early and numerous class of romances was founded, are related to the traditions of the last people. These are such as turn upon the fable of Arthur; for though we are not entitled to deny the existence of such a personage, his story seems chiefly the creation of Celtic vanity. Traditions current in Brittany, though probably derived from this

island, became the basis of Geoffrey of Monmouth's Latin prose, which, as has been seen, was transfused into French metre by Wace. The vicinity of Normandy enabled its poets to enrich their narratives with other Armorican fictions, all relating to the heroes who had surrounded the table of the son of Uther. An equally imaginary history of Charlemagne gave rise to a new family of romances. The authors of these fictions were called trouveurs, a name obviously identical with that of troubadours. But except in name there was no resemblance between the minstrels of the northern and southern dialects. The invention of one class was turned to description, that of the other to sentiment; the first were epic in their form and style, the latter almost always lyric. We can not, perhaps, give a better notion of their dissimilitude than by saying that one school produced Chaucer, and the other Petrarch. Besides these romances of chivalry, the trouveurs displayed their powers of lively narration in comic tales or fabliaux (a name sometimes extended to the higher romance), which have aided the imagination of Boccace and La Fontaine. These compositions are certainly more entertaining than those of the troubadours; but, contrary to what I have said of the latter, they often gain by appearing in a modern dress. Their versification, which doubtless had its charm when listened to around the hearth of an ancient castle, is very languid and prosaic, and suitable enough to the tedious prolixity into which the narrative is apt to fall; and though we find many sallies of that arch and sprightly simplicity which characterizes the old language of France as well as England, it requires, upon the whole, a factitious taste to relish these Norman tales, considered as poetry in the higher sense of the word, distinguished from metrical fiction.

A manner very different from that of the fabliaux was adopted in the Roman de la Rose, begun by William de Loris about 1250, and completed by John de Meun half a century later. This poem, which contains about 16,000 lines in the usual octosyllable verse, from which the early French writers seldom deviated, is an allegorical vision, wherein love and the other passions or qualities connected with it pass over the stage, without the intervention, I believe, of any less abstract personages. Though similar allegories were not unknown to the ancients, and, which is more to the purpose, may be found in other productions of the thirteenth century, none had been constructed so elaborately as that of the Roman de la Rose. Cold and tedious as we now con-

sider this species of poetry, it originated in the creative power of imagination, and appealed to more refined feeling than the common metrical narratives could excite. This poem was highly popular in the Middle Ages, and became the source of those numerous allegories which had not ceased in the seventeenth century.

The French language was employed in prose as well as in metre. Indeed it seems to have had almost an exclusive privilege in this respect. "The language of Oil," says Dante, in his treatise on vulgar speech, prefers its claim to be ranked above those of Oc and Si (Provençal and Italian), on the ground that all translations or compositions in prose have been written therein, from its greater facility and grace, such as the books compiled from the Trojan and Roman stories, the delightful fables about Arthur, and many other works of history and science." I have mentioned already the sermons of St. Bernard and translations from Scripture. The laws of the kingdom of Jerusalem purport to have been drawn up immediately after the first crusade, and, though their language has been materially altered, there seems no doubt that they were originally compiled in French. Besides some charters, there are said to have been prose romances before the year 1200. Early in the next age Ville Hardouin, seneschal of Campagne, recorded the capture of Constantinople in the fourth crusade, an expedition the glory and reward of which he had personally shared, and, as every original work of prior date has either perished or is of small importance, may be deemed the father of French prose. The Establishments of St. Louis and the law treatise of Beaumanoir fill up the interval of the thirteenth century; and before its conclusion we must suppose the excellent memoirs of Joinville to have been composed, since they are dedicated to Louis X. in 1315, when the author could hardly be less than ninety years of age. Without prosecuting any further the history of French literature, I will only mention the translations of Livy and Sallust, made in the reign and by the order of John, with those of Cæsar, Suetonius, Ovid, and parts of Cicero, which are due to his successor, Charles V.

§ 27. I confess myself wholly uninformed as to the original formation of the Spanish language, and as to the epoch of its separation into the two principal dialects of Castile and Portugal or Gallicia; nor should I perhaps have alluded to the literature of that peninsula, were it not for a remarkable poem which shines out among the minor lights of those times. This is a metrical life of the Cid Ruy Diaz, written

in a barbarous style and with the rudest inequality of measure, but with a truly Homeric warmth and vivacity of delineation. It is much to be regretted that the author's name has perished; but its date has been referred by some to the middle of the twelfth century, while the hero's actions were yet recent, and before the taste of Spain had been corrupted by the Provençal troubadours, whose extremely different manner would, if it did not pervert the poet's genius, at least have impeded his popularity. A very competent judge has pronounced the poem of the Cid to be "decidedly and beyond comparison the finest in the Spanish language." It is at least superior to any that was written in Europe before the appearance of Dante.[28]

§ 28. A strange obscurity envelops the infancy of the Italian language. Though it is certain that grammatical Latin had ceased to be employed in ordinary discourse, at least from the time of Charlemagne, we have not a single passage of undisputed authenticity in the current idiom for nearly four centuries afterwards. Though Italian phrases are mixed up in the barbarous jargon of some charters, not an instrument is extant in that language before the year 1200. Nor is there a vestige of Italian poetry older than a few fragments of Ciullo d'Alcamo, a Sicilian, who must have written before 1193, since he mentions Saladin as then living. This may strike us as the more remarkable, when we consider the political circumstances of Italy in the eleventh and twelfth centuries. From the struggles of her spirited republics against the emperors and their internal factions we might, upon all general reasoning, anticipate the early use and vigorous cultivation of their native language. Even if it were not yet ripe for historians and philosophers, it is strange that no poet should have been inspired with songs of triumph or invective by the various fortunes of his country. But, on the contrary, the poets of Lombardy became troubadours, and wasted their genius in Provençal love-strains at the courts of princes. The Milanese and other Lombard dialects were, indeed, exceedingly rude; but this rudeness separated them more decidedly from Latin: nor is it possible that the Lombards could have employed that language intelligibly for any public or domestic purpose. And indeed, in the earliest Italian compositions that have been published, the new language is so thoroughly formed, that it is natural to

[28] An extract from this poem was published in 1808 by Mr. Southey, at the end of his "Chronicles of the Cid." M. Sismondi has given other passages in the third volume of his "History of Southern Literature."

infer a very long disuse of that from which it was derived. The Sicilians claim the glory of having first adapted their own harmonious dialect to poetry. Frederick II. both encouraged their art and cultivated it; among the very first essays of Italian verse we find his productions and those of his chancellor Pierodelle Vigne. Thus Italy was destined to owe the beginnings of her national literature to a foreigner and an enemy. These poems are very short and few; those ascribed to St. Francis about the same time are hardly distinguishable from prose; but after the middle of the thirteenth century the Tuscan poets awoke to a sense of the beauties which their native language, refined from the impurities of vulgar speech, could display, and the genius of Italian literature was rocked upon the restless waves of the Florentine democracy. Ricordano Malespini, the first historian, and nearly the first prose writer in Italian, left memorials of the republic down to the year 1281, which was that of his death, and it was continued by Giacchetto Malespini to 1286. These are little inferior in purity of style to the best Tuscan authors; for it is the singular fate of that language to have spared itself all intermediate stages of refinement, and, starting the last in the race, to have arrived almost instantaneously at the goal. There is an interval of not much more than half a century between the short fragment of Ciullo d'Alcamo, mentioned above, and the poems of Guido Guinizzelli, Guitone d'Arezzo, and Guido Cavalcante, which, in their diction and turn of thought, are sometimes not unworthy of Petrarch.

§ 29. But at the beginning of the next age arose a much greater genius, the true father of Italian poetry, and the first name in the literature of the Middle Ages. This was Dante, or Durante Alighieri, born in 1265, of a respectable family at Florence. Attached to the Guelf party, which had then obtained a final ascendency over its rival, he might justly promise himself the natural reward of talents under a free government—public trust and the esteem of his compatriots. But the Guelfs unhappily were split into two factions, the Bianchi and the Neri, with the former of whom, and, as it proved, the unsuccessful side, Dante was connected. In 1300 he filled the office of one of the priori, or chief magistrates, at Florence; and having manifested in this, as was alleged, some partiality towards the Bianchi, a sentence of proscription passed against him about two years afterwards, when it became the turn of the opposite faction to triumph. Banished from his country, and baffled in several efforts of his

friends to restore their fortunes, he had no resource but at the courts of the Scalas at Verona, and other Italian princes, attaching himself in adversity to the imperial interests, and tasting, in his own language, the bitterness of another's bread. In this state of exile he finished, if he did not commence, his great poem, the Divine Comedy—a representation of the three kingdoms of futurity, Hell, Purgatory, and Paradise, divided into one hundred cantos, and containing about 14,000 lines. He died at Ravenna, in 1321.

Dante is among the very few who have created the national poetry of their country. For notwithstanding the polished elegance of some early Italian verse, it had been confined to amorous sentiment; and it was yet to be seen that the language could sustain, for a greater length than any existing poem except the Iliad, the varied style of narration, reasoning, and ornament. Of all writers he is the most unquestionably original. Virgil was indeed his inspiring genius, as he declares himself, and as may sometimes be perceived in his diction; but his tone is so peculiar and characteristic, that few readers would be willing at first to acknowledge any resemblance. He possessed in an extraordinary degree a command of language, the abuse of which led to his obscurity and licentious innovations. No poet ever excelled him in conciseness, and in the rare talent of finishing his pictures by a few bold touches—the merit of Pindar in his better hours. How prolix would the stories of Francesca or of Ugolino have become in the hands of Ariosto, or of Tasso, or of Ovid, or of Spenser! This excellence, indeed, is most striking in the first part of his poem. Having formed his plan so as to give an equal length to the three regions of his spiritual world, he found himself unable to vary the images of hope or beatitude, and the Paradise is a continual accumulation of descriptions, separately beautiful, but uniform and tedious. Though images derived from light and music are the most pleasing, and can be borne longer in poetry than any others, their sweetness palls upon the sense by frequent repetition, and we require the intermixture of sharper flavors. Yet there are detached passages of great excellence in this third part of Dante's poem; and even in the long theological discussions, which occupy the greater proportion of its thirty-three cantos, it is impossible not to admire the enunciation of abstract positions with remarkable energy, conciseness, and sometimes perspicuity. The first twelve cantos of the Purgatory are an almost continual flow of soft and brilliant poetry. The last seven are also very

splendid; but there is some heaviness in the intermediate parts. Fame has justly given the preference to the Inferno, which displays throughout a more vigorous and masterly conception; but the mind of Dante can not be thoroughly appreciated without a perusal of his entire poem.

The most forced and unnatural turns, the most barbarous licenses of idiom, are found in this poem, whose power of expression is at other times so peculiarly happy. His style is indeed generally free from those conceits of thought which discredited the other poets of his country; but no sense is too remote for a word which he finds convenient for his measure or his rhyme. It seems, indeed, as if he never altered a line on account of the necessity of rhyme, but forced another, or perhaps a third, into company with it. For many of his faults no sufficient excuse can be made. But it is candid to remember that Dante, writing almost in the infancy of a language which he contributed to create, was not to anticipate that words which he borrowed from the Latin and from the provincial dialects would by accident, or through the timidity of later writers, lose their place in the classical idiom of Italy. If Petrarch, Bembo, and a few more, had not aimed rather at purity than copiousness, the phrases which now appear barbarous, and are at least obsolete, might have been fixed by use in poetical language.

The great characteristic excellence of Dante is elevation of sentiment, to which his compressed diction and the emphatic cadences of his measure admirably correspond. We read him not as an amusing poet, but as a master of moral wisdom, with reverence and awe. Fresh from the deep and serious, though somewhat barren, studies of philosophy, and schooled in the severer discipline of experience, he has made of his poem a mirror of his mind and life, the register of his solicitudes and sorrows, and of the speculations in which he sought to escape their recollection. The banished magistrate of Florence, the disciple of Brunetto Latini, the statesman accustomed to trace the varying fluctuations of Italian faction, is forever before our eyes. For this reason, even the prodigal display of erudition, which in an epic poem would be entirely misplaced, increases the respect we feel for the poet, though it does not tend to the reader's gratification. Except Milton, he is much the most learned of all the great poets, and, relatively to his age, far more learned than Milton. In one so highly endowed by nature, and so consummate by instruction, we may well sympathize with a resentment which exile and poverty rendered perpetually fresh.

The heart of Dante was naturally sensible, and even tender; his poetry is full of simple comparisons from rural life; and the sincerity of his early passion for Beatrice pierces through the veil of allegory which surrounds her. But the memory of his injuries pursues him into the immensity of eternal light; and, in the company of saints and angels, his unforgiving spirit darkens at the name of Florence.

This great poem was received in Italy with that enthusiastic admiration which attaches itself to works of genius only in ages too rude to listen to the envy of competitors or the fastidiousness of critics. Almost every library in that country contains manuscript copies of the Divine Comedy, and an account of those who have abridged or commented upon it would swell to a volume. It was thrice printed in the year 1472, and at least nine times within the fifteenth century. The city of Florence in 1373, with a magnanimity which almost redeems her original injustice, appointed a public professor to read lectures upon Dante; and it was hardly less honorable to the poet's memory that the first person selected for this office was Boccaccio. The universities of Pisa and Piacenza imitated this example; but it is probable that Dante's abstruse philosophy was often more regarded in their chairs than his higher excellences. Italy indeed, and all Europe, had reason to be proud of such a master. Since Claudian, there had been seen for nine hundred years no considerable body of poetry, except the Spanish poem of the Cid, of which no one had heard beyond the peninsula, that could be said to pass mediocrity; and we must go much farther back than Claudian to find any one capable of being compared with Dante. His appearance made an epoch in the intellectual history of modern nations, and banished the discouraging suspicion which long ages of lethargy tended to excite, that nature had exhausted her fertility in the great poets of Greece and Rome. It was as if, at some of the ancient games, a stranger had appeared upon the plain, and thrown his quoit among the marks of former casts which tradition had ascribed to the demigods. But the admiration of Dante, though it gave a general impulse to the human mind, did not produce imitators. I am unaware, at least, of any writer, in whatever language, who can be said to have followed the steps of Dante: I mean not so much in his subject as in the character of his genius and style. His orbit is still all his own, and the track of his wheels can never be confounded with that of a rival.

§ 30. In the same year that Dante was expelled from

Florence, a notary, by name Petracco, was involved in a similar banishment. Retired to Arezzo, he there became the father of Francis Petrarch. This great man shared of course, during his early years, in the adverse fortune of his family, which he was invincibly reluctant to restore, according to his father's wish, by the profession of jurisprudence. The strong bias of nature determined him to polite letters and poetry. These are seldom the fountains of wealth; yet they would perhaps have been such to Petrarch, if his temper could have borne the sacrifice of liberty for any worldly acquisitions. At the city of Avignon, where his parents had latterly resided, his graceful appearance and the reputation of his talents attracted one of the Colonna family, then Bishop of Lombes, in Gascony. In him, and in other members of that great house, never so illustrious as in the fourteenth century, he experienced the union of patronage and friendship. This, however, was not confined to the Colonnas. Unlike Dante, no poet was ever so liberally and sincerely encouraged by the great; nor did any, perhaps, ever carry to that perilous intercourse a spirit more irritably independent, or more free from interested adulation. He praised his friends lavishly because he loved them ardently; but his temper was easily susceptible of offense, and there must have been much to tolerate in that restlessness and jealousy of reputation which is perhaps the inevitable failing of a poet. But every thing was forgiven to a man who was the acknowledged boast of his age and country. Clement VI. conferred one or two sinecure benefices upon Petrarch, and would probably have raised him to a bishopric if he had chosen to adopt the ecclesiastical profession. But he never took orders, the clerical tonsure being a sufficient qualification for holding canonries. The same pope even afforded him the post of apostolical secretary, and this was repeated by Innocent VI. I know not whether we should ascribe to magnanimity or to a politic motive the behavior of Clement VI. towards Petrarch, who had pursued a course as vexatious as possible to the Holy See. For not only he made the residence of the supreme pontiffs at Avignon, and the vices of their court, the topic of invectives, too well founded to be despised, but he had ostentatiously put himself forward as the supporter of Nicola di Rienzi in a project which could evidently have no other aim than to wrest the city of Rome from the temporal sovereignty of its bishop. Nor was the friendship and society of Petrarch less courted by the most respectable Italian princes; by Robert, king of Naples, by

the Visconti, the Correggi of Parma, the famous doge of Venice, Andrew Dandolo, and the Carrara family of Padua, under whose protection he spent the latter years of his life. Stories are related of the respect shown to him by men in humbler stations which are perhaps still more satisfactory. But the most conspicuous testimony of public esteem was bestowed by the city of Rome, in his solemn coronation as laureate poet in the Capitol. This ceremony took place in 1341; and it is remarkable that Petrarch had at that time composed no works which could, in our estimation, give him pretensions to so singular an honor.

The moral character of Petrarch was formed of dispositions peculiarly calculated for a poet. An enthusiast in the emotions of love and friendship, of glory, of patriotism, of religion, he gave the rein to all their impulses; and there is not, perhaps, a page in his Italian writing which does not bear the trace of one or other of these affections. By far the most predominant, and that which has given the greatest celebrity to his name, is his passion for Laura. Twenty years of unrequited and almost unaspiring love were lightened by song; and the attachment, which, having long survived the beauty of its object, seems to have at one time nearly passed from the heart to the fancy, was changed to an intenser feeling, and to a sort of celestial adoration, by her death. Laura, before the time of Petrarch's first accidental meeting with her, was united in marriage with another; a fact which, besides some more particular evidence, appears to me deducible from the whole tenor of his poetry.[26] Such a passion is undoubtedly not capable of a moral defense; nor would I seek its palliation so much in the prevalent manners of his age, by which, however, the conduct of even good men is generally not a little influenced, as in the infirmity of Petrarch's character, which induced him both to obey and to justify the emotions of his heart. The lady, too, whose virtue and prudence we are not to question, seems to have tempered the light and shadow of her countenance, so as to preserve her admirer from despair, and consequently to prolong his sufferings and servitude.

The general excellences of Petrarch are his command over the music of his native language, his correctness of style, scarcely two or three words that he has used having been rejected by later writers, his exquisite elegance of diction, improved by the perpetual study of Virgil; but, far above all, that tone of pure and melancholy sentiment, which has

[26] See NOTE II., "Petrarch's Laura."

something in it unearthly, and forms a strong contrast to the amatory poems of antiquity. Most of these are either licentious or uninteresting; and those of Catullus, a man endowed by nature with deep and serious sensibility, and a poet, in my opinion, of greater and more varied genius than Petrarch, are contaminated above all the rest with the most degrading grossness. Of this there is not a single instance in the poet of Vaucluse; and his strains, diffused and admired as they have been, may have conferred a benefit that criticism can not estimate, in giving elevation and refinement to the imaginations of youth. The great defect of Petrarch was his want of strong original conception, which prevented him from throwing off the affected and overstrained manner of the Provençal troubadours, and of the earlier Italian poets.

§ 31. None of the principal modern languages was so late in its formation, or in its application to the purposes of literature, as the English. This arose, as is well known, out of the Saxon branch of the great Teutonic stock spoken in England till after the Conquest. From this mother dialect our English differs much less in respect of etymology than of syntax, idiom, and flexion. In so gradual a transition as probably took place, and one so sparingly marked by any existing evidence, we can not well assign a definite origin to our present language. The question of identity is almost as perplexing in languages as in individuals. But in the reign of John, a version of Wace's poem of Brut, by one Layamon,[27] a priest of Ernly-upon-Severn, exhibits, as it were, the

[27] The entire work of Layamon contains a small number of words taken from the French; about fifty in the original text, and about forty more in that of a manuscript perhaps half a century later, and very considerably altered in consequence of the progress of our language. Many of these words derived from the French express new ideas, as admiral, astronomy, baron, mantel, etc. "The language of Layamon," says Sir Frederick Madden, "belongs to that transition period in which the groundwork of Anglo-Saxon phraseology and grammar still existed, although gradually yielding to the influence of the popular forms of speech. We find in it, as in the later portion of the Saxon Chronicle, marked indications of a tendency to adopt those terminations and sounds which characterize a language in a state of change, and which are apparent also in some other branches of the Teutonic tongue. The use of *a* as an article—the change of the Anglo-Saxon terminations *a* and *an* into *e* and *en*, as well as the disregard of inflections and genders—the masculine forms given to neuter nouns in the plural—the neglect of the feminine terminations of adjectives and pronouns, and confusion between the definite and indefinite declensions—the introduction of the preposition *to* before infinitives, and occasional use of weak preterits of verbs and participles instead of strong—the constant recurrence of *er* for *or* in the plurals of verbs—together with the uncertainty of the rule for the government of prepositions—all these variations, more or less visible in the two texts of Layamon, combined with the vowel-changes, which are numerous, though not altogether arbitrary, will show at once the progress made in two centuries, in departing from the ancient and purer grammatical forms, as found in Anglo-Saxon manuscripts."—*Preface*, p. xxviii.

chrysalis of the English language, in a very corrupt modification of the Anglo-Saxon. Very soon afterwards the new formation was better developed; and some metrical pieces, referred by critics to the earlier part of the thirteenth century, differ but little from our legitimate grammar. About the beginning of Edward I.'s reign, Robert, a monk of Gloucester, composed a metrical chronicle from the history of Geoffrey of Monmouth, which he continued to his own time. This work, with a similar chronicle of Robert Manning, a monk of Brunne (Bourne), in Lincolnshire, nearly thirty years later, stands at the head of our English poetry. The romance of Sir Tristrem, ascribed to Thomas of Erceldoune, surnamed the Rhymer, a Scottish minstrel, has laid claim to somewhat higher antiquity. In the fourteenth century a great number of metrical romances were translated from the French. It requires no small portion of indulgence to speak favorably of any of these early English productions. A poetical line may no doubt occasionally be found; but in general the narration is as heavy and prolix as the versification is unmusical. The first English writer who can be read with approbation is William Langland, the author of Piers Plowman's Vision, a severe satire upon the clergy. Though his measure is more uncouth than that of his predecessors, there is real energy in his conceptions, which he caught not from the chimeras of knight-errantry, but the actual manners and opinions of his time.

The very slow progress of the English language as an instrument of literature is chiefly to be ascribed to the effects of the Norman conquest, in degrading the native inhabitants and transferring all power and riches to foreigners. The barons, without, perhaps, one exception, and a large proportion of the gentry, were of French descent, and preserved among themselves the speech of their fathers. This continued much longer than we should naturally have expected; even after the loss of Normandy had snapped the thread of French connections, and they began to pride themselves in the name of Englishmen, and in the inheritance of traditionary English privileges. Robert of Gloucester has a remarkable passage, which proves that in his time, somewhere about 1290, the superior ranks continued to use the French language. Ralph Higden, about the early part of Edward III.'s reign, though his expressions do not go the same length, asserts that "gentlemen's children are taught to speak French from the time they are rocked in their cradle; and uplandish (country) or inferior men will liken themselves to gentlemen,

and learn with great business for to speak French, for to be the more told of." Notwithstanding, however, this predominance of French among the higher class, I do not think that some modern critics are warranted in concluding that they were in general ignorant of the English tongue. Men living upon their estates among their tenantry, whom they welcomed in their halls, and whose assistance they were perpetually needing in war and civil frays, would hardly have permitted such a barrier to obstruct their intercourse. For we can not, at the utmost, presume that French was so well known to the English commonalty in the thirteenth century as English is at present to the same class in Wales and the Scottish Highlands. It may be remarked, also, that the institution of trial by jury must have rendered a knowledge of English almost indispensable to those who administered justice. There is a proclamation of Edward I. in Rymer, where he endeavors to excite his subjects against the King of France by imputing to him the intention of conquering the country and abolishing the English language (linguam delere Anglicanam), and this is frequently repeated in the proclamations of Edward III. In his time, or perhaps a little before, the native language had become more familiar than French in common use, even with the court and nobility. Hence the numerous translations of metrical romances, which are chiefly referred to his reign. An important change was effected in 1362 by a statute, which enacts that all pleas in courts of justice shall be pleaded, debated, and judged in English. But Latin was by this act to be employed in drawing the record; for there seems to have still continued a sort of prejudice against the use of English as a written language. The earliest English instrument known to exist is said to bear the date of 1343. And there are but few entries in our own tongue upon the rolls of Parliament before the reign of Henry VI., after whose accession its use becomes very common.[26] Sir John Mandeville, about 1356, may pass for the father of English prose, no original work being so ancient as his Travels. But the translation of the Bible and other writings by Wicliffe, nearly thirty years afterwards, taught us the copiousness and energy of which our native dialect was capable; and it was employed in the fifteenth century by two writers of distinguished merit, Bishop Pecock and Sir John Fortescue.

§ 32. But the principal ornament of our English literature was Geoffrey Chaucer, who, with Dante and Petrarch, fills up

[26] See NOTE IV. "The Legislative Use of the English Language."

the triumvirate of great poets in the Middle Ages. Chaucer was born in 1328, and his life extended to the last year of the fourteenth century. That rude and ignorant generation was not likely to feel the admiration of native genius as warmly as the compatriots of Petrarch; but he enjoyed the favor of Edward III., and still more conspicuously of John, duke of Lancaster; his fortunes were far more prosperous than have usually been the lot of poets; and a reputation was established beyond competition in his lifetime, from which no succeeding generation has withheld its sanction. I can not in my own taste go completely along with the eulogies that some have bestowed upon Chaucer, who seems to me to have wanted grandeur, where he is original, both in conception and in language. But in vivacity of imagination and ease of expression he is above all poets of the middle time, and comparable perhaps to the greatest of those who have followed. He invented, or rather introduced from France, and employed with facility the regular iambic couplet; and though it was not to be expected that he should perceive the capacities latent in that measure, his versification, to which he accommodated a very licentious and arbitrary pronunciation, is uniform and harmonious. It is chiefly, indeed, as a comic poet, and a minute observer of manners and circumstances, that Chaucer excels. In serious and moral poetry he is frequently languid and diffuse; but he springs like Antæus from the earth when his subject changes to coarse satire or merry narrative. Among his more elevated compositions, the Knight's Tale is abundantly sufficient to immortalize Chaucer, since it would be difficult to find anywhere a story better conducted, or told with more animation and strength of fancy. The second place may be given to his Troilus and Creseide, a beautiful and interesting poem, though enfeebled by expansion. But perhaps the most eminent, or at any rate the most characteristic, testimony to his genius will be found in the prologue to his Canterbury Tales; a work entirely and exclusively his own, which can seldom be said of his poetry, and the vivid delineations of which perhaps very few writers but Shakspeare could have equalled. As the first original English poet, if we except Langland, as the inventor of our most approved measure, as an improver, though with too much innovation, of our language, and as a faithful witness to the manners of his age, Chaucer would deserve our reverence, if he had not also intrinsic claims for excellences which do not depend upon any collateral considerations.

§ 33. (IV.) REVIVAL OF ANCIENT LEARNING. — The last circumstance which I shall mention, as having contributed to restore society from the intellectual degradation into which it had fallen during the Dark Ages, is the revival of classical learning. The Latin language, indeed, in which all legal instruments were drawn up, and of which all ecclesiastics availed themselves in their epistolary intercourse, as well as in their more solemn proceedings, had never ceased to be familiar. Though many solecisms and barbarous words occur in the writings of what were called learned men, they possessed a fluency of expression in Latin which does not often occur at present. During the Dark Ages, however, properly so called, or the period from the sixth to the eleventh century, we chiefly meet with quotations from the Vulgate or from theological writers. Nevertheless, quotations from the Latin poets are hardly to be called unusual. Virgil, Ovid, Statius, and Horace are brought forward by those who aspired to some literary reputation, especially during the better periods of that long twilight, the reigns of Charlemagne and his son in France, part of the tenth century in Germany, and the eleventh in both. The prose writers of Rome are not so familiar, but in quotations we are apt to find the poets preferred; and it is certain that a few could be named who were not ignorant of Cicero, Sallust, and Livy. A considerable change took place in the course of the twelfth century. The polite literature, as well as the abstruser science of antiquity, became the subject of cultivation. Several writers of that age, in different parts of Europe, are distinguished more or less for elegance, though not absolute purity, of Latin style, and for their acquaintance with those ancients who are its principal models. Such were John of Salisbury, the acute and learned author of the Polycraticon, William of Malmsbury, Giraldus Cambrensis, Roger Hoveden, in England; and in foreign countries, Otho of Frisingen, Saxo Grammaticus, and the best perhaps of all I have named as to style, Falcandus, the historian of Sicily. In these we meet with frequent quotations from Livy, Cicero, Pliny, and other considerable writers of antiquity. The poets were now admired and even imitated. All metrical Latin before the latter part of the twelfth century, so far as I have seen, is of little value; but at this time, and early in the succeeding age, there appeared several versifiers who aspired to the renown of following the steps of Virgil and Statius in epic poetry. Joseph Iscanus, an Englishman, seems to have been the earliest of these; his poem on the Trojan war containing an address to Henry II.

He wrote another, entitled Antiocheis, on the third crusade, most of which has perished. The wars of Frederick Barbarossa were celebrated by Gunther in his Ligurinus; and not long afterwards Guillelmus Brito wrote the Philippis, in honor of Philip Augustus, and Walter de Chatillon the Alexandreis, taken from the popular romance of Alexander. None of these poems, I believe, have much intrinsic merit; but their existence is a proof of taste that could relish, though not of genius that could emulate, antiquity.

In the thirteenth century there seems to have been some decline of classical literature, in consequence probably of the scholastic philosophy, which was then in its greatest vigor; at least we do not find so many good writers as in the preceding age. But about the middle of the fourteenth, or perhaps a little sooner, an ardent zeal for the restoration of ancient learning began to display itself. The copying of books, for some ages slowly and sparingly performed in monasteries, had already become a branch of trade; and their price was consequently reduced. Tiraboschi denies that the invention of making paper from linen rags is older than the middle of that century; and although doubts may be justly entertained as to the accuracy of this position, yet the confidence with which so eminent a scholar advances it is at least a proof that paper manuscripts of an earlier date are very rare. Princes became far more attentive to literature when it was no longer confined to metaphysical theology and canon law. I have already mentioned the translations from classical authors, made by command of John and Charles V. of France. These French translations diffused some acquaintance with ancient history and learning among our own countrymen. The public libraries assumed a more respectable appearance. Louis IX. had formed one at Paris, in which it does not appear that any work of elegant literature was found. At the beginning of the fourteenth century, only four classical manuscripts existed in this collection — of Cicero, Ovid, Lucan, and Boethius. The academical library of Oxford, in 1300, consisted of a few tracts kept in chests under St. Mary's Church. That of Glastonbury Abbey, in 1240, contained four hundred volumes, among which were Livy, Sallust, Lucan, Virgil, Claudian, and other ancient writers. But no other, probably, of that age was so numerous or so valuable. Richard of Bury, chancellor of England, and Edward III., spared no expense in collecting a library, the first, perhaps, that any private man had formed. But the scarcity of valuable books was still so great, that he gave

the Abbot of St. Albans fifty pounds' weight of silver for between thirty and forty volumes. Charles V. increased the royal library at Paris to nine hundred volumes, which the Duke of Bedford purchased and transported to London. His brother Humphrey, duke of Gloucester, presented the University of Oxford with six hundred books, which seem to have been of extraordinary value, one hundred and twenty of them having been estimated at one thousand pounds. This, indeed, was in 1440, at which time such a library would not have been thought remarkably numerous beyond the Alps; but England had made comparatively little progress in learning. Germany, however, was probably still less advanced. Louis, elector palatine, bequeathed, in 1421, his library to the University of Heidelberg, consisting of one hundred and fifty-two volumes. Eighty-nine of these related to theology, twelve to canon and civil law, forty-five to medicine, and six to philosophy.

Those who first undertook to lay open the stores of ancient learning found incredible difficulties from the scarcity of manuscripts. So gross and supine was the ignorance of the monks within whose walls these treasures were concealed, that it was impossible to ascertain, except by indefatigable researches, the extent of what had been saved out of the great shipwreck of antiquity. To this inquiry Petrarch devoted continual attention. He spared no means to preserve the remains of authors who were perishing from neglect and time. This danger was by no means past in the fourteenth century. A treatise of Cicero upon Glory, which had been in his possession, was afterwards irretrievably lost. He declares that he had seen in his youth the works of Varro; but all his endeavors to recover these and the second Decade of Livy were fruitless. He found, however, Quintilian, in 1350, of which there was no copy in Italy. Boccaccio, and a man of less general fame, Colluccio Salutato, were distinguished in the same honorable task. The diligence of these scholars was not confined to searching for manuscripts. Transcribed by slovenly monks, or by ignorant persons who made copies for sale, they required the continual emendation of accurate critics. Though much, certainly, was left for the more enlightened sagacity of later times, we owe the first intelligible text of the Latin classics to Petrarch, Poggio, and their contemporary laborers in this vineyard for a hundred years before the invention of printing.

What Petrarch began in the fourteenth century was carried on by the new generation with unabating industry.

The whole lives of Italian scholars in the fifteenth century were devoted to the recovery of manuscripts and the revival of philology. For this they sacrificed their native language, which had made such surprising shoots in the preceding age, and were content to trace in humble reverence the footsteps of antiquity. For this, too, they lost the hope of permanent glory, which can never remain with imitators, or such as trim the lamp of ancient sepulchres. No writer, perhaps, of the fifteenth century, except Politian, can aspire at present even to the second class in a just marshalling of literary reputation. But we owe them our respect and gratitude for their taste and diligence. This discovery of an unknown manuscript, says Tiraboschi, was regarded almost as the conquest of a kingdom. The classical writers, he adds, were chiefly either found in Italy, or at least by Italians; they were first amended and first printed in Italy, and in Italy they were first collected in public libraries. This is subject to some exception, when fairly considered; several ancient authors were never lost, and therefore can not be said to have been discovered; and we know that Italy did not always anticipate other countries in classical printing. But her superior merit is incontestable. Poggio Bracciolini, who stands, perhaps, at the head of the restorers of learning in the earlier part of the fifteenth century, discovered in the monastery of St. Gall, among dirt and rubbish, in a dungeon scarcely fit for condemned criminals, as he describes it, an entire copy of Quintilian and part of Valerius Flaccus. This was in 1414; and soon afterwards he rescued the poem of Silius Italicus, and twelve comedies of Plautus, in addition to eight that were previously known; besides Lucretius, Columella, Tertullian, Ammianus Marcellinus, and other writers of inferior note. A bishop of Lodi brought to light the rhetorical treatises of Cicero. Not that we must suppose these books to have been universally unknown before; Quintilian, at least, is quoted by English writers much earlier. But so little intercourse prevailed among different countries, and the monks had so little acquaintance with the riches of their conventual libraries, that an author might pass for lost in Italy who was familiar to a few learned men in other parts of Europe. To the name of Poggio we may add a number of others, distinguished in this memorable resurrection of ancient literature, and united, not always, indeed, by friendship, for their bitter animosities disgrace their profession, but by a sort of common sympathy in the cause of learning: Filelfo, Laurentius Valla, Niccolo Niccoli, Ambrogio Traversari, more commonly called Il Camaldolense, and Leonardo Aretino.

§ 34. From the subversion of the Western Empire, or at least from the time when Rome ceased to pay obedience to the exarchs of Ravenna, the Greek language and literature had been almost entirely forgotten within the pale of the Latin Church. A very few exceptions might be found, especially in the earlier period of the Middle Ages, while the Eastern emperors retained their dominion over part of Italy. Thus Charlemagne is said to have established a school for Greek at Osnaburg. John Scotus seems to have been well acquainted with the language. And Greek characters may occasionally, though very seldom, be found in the writings of learned men; such as Lanfranc, or William of Malmsbury. It is said that Roger Bacon understood Greek; and that his eminent contemporary, Robert Grostete, bishop of Lincoln, had a sufficient intimacy with it to translate a part of Suidas. Since Greek was spoken with considerable purity by the noble and well-educated natives of Constantinople, we may wonder that, even as a living language, it was not better known by the Western nations, and especially in so neighboring a nation as Italy. Yet here the ignorance was, perhaps, even more complete than in France or England. In some parts, indeed, of Calabria, which had been subject to the Eastern Empire till near the year 1100, the liturgy was still performed in Greek; and a considerable acquaintance with the language was of course preserved. But for the scholars of Italy, Boccaccio positively asserts that no one understood so much as the Greek characters. Nor is there, probably, a single line quoted from any poet in that language from the sixth to the fourteenth century.

The first to lead the way in restoring Grecian learning in Europe were the same men who had revived the kindred muses of Latium, Petrarch, and Boccaccio. Barlaam, a Calabrian by birth, during an embassy from the Court of Constantinople in 1335, was persuaded to become the preceptor of the former, with whom he read the works of Plato. Leontius Pilatus, a native of Thessalonica, was encouraged some years afterwards by Boccaccio to give public lectures upon Homer at Florence. Whatever might be the share of general attention that he excited, he had the honor of instructing both these great Italians in his native language. Neither of them, perhaps, reached an advanced degree of proficiency; but they bathed their lips in the fountain, and enjoyed the pride of being the first who paid the homage of a new posterity to the father of poetry. For some time little fruit, apparently, resulted from their example; but Italy

had imbibed the desire of acquisitions in a new sphere of knowledge, which, after some interval, she was abundantly able to realize. A few years before the termination of the fourteenth century, Emanuel Chrysoloras, whom the Emperor John Palæologus had previously sent into Italy, and even as far as England, upon one of those unavailing embassies by which the Byzantine Court strove to obtain sympathy and succor from Europe, returned to Florence as a public teacher of Grecian literature. His school was afterwards removed successively to Pavia, Venice, and Rome; and during nearly twenty years that he taught in Italy most of those eminent scholars whom I have already named, and who distinguish the first half of that century, derived from his instruction their knowledge of the Greek tongue. Some, not content with being the disciples of Chrysoloras, betook themselves to the source of that literature at Constantinople; and returned to Italy not only with a more accurate insight into the Greek idiom than they could have attained at home, but with copious treasures of manuscripts, few, if any, of which probably existed previously in Italy, where none had ability to read or value them; so that the principal authors of Grecian antiquity may be considered as brought to light by these inquirers, the most celebrated of whom are Guarino of Verona, Aurispa, and Filelfo. The second of these brought home to Venice, in 1423, not less than two hundred and thirty-eight volumes.

The fall of that Eastern Empire, which had so long outlived all other pretensions to respect that it scarcely retained that founded upon its antiquity, seems to have been providentially delayed till Italy was ripe to nourish the scattered seeds of literature that would have perished a few ages earlier in the common catastrophe. From the commencement of the fifteenth century even the national pride of Greece could not blind her to the signs of approaching ruin. It was no longer possible to inspire the European republic, distracted by wars and restrained by calculating policy, with the generous fanaticism of the Crusades; and at the Council of Florence, in 1439, the court and church of Constantinople had the mortification of sacrificing their long-cherished faith, without experiencing any sensible return of protection or security. The learned Greeks were perhaps the first to anticipate, and certainly not the last to avoid, their country's destruction. The Council of Florence brought many of them into Italian connections, and held out at least a temporary accommodation of their conflicting opinions. Though the Ro-

man pontiffs did nothing, and probably could have done nothing, effectual for the empire of Constantinople, they were very ready to protect and reward the learning of individuals. To Eugenius IV., to Nicolas V., to Pius II., and some other popes of this age, the Greek exiles were indebted for a patronage which they repaid by splendid services in the restoration of their native literature throughout Italy. Bessarion, a disputant on the Greek side in the Council of Florence, was well content to renounce the doctrine of single procession for a cardinal's hat—a dignity which he deserved for his learning, if not for his pliancy. Theodore Gaza, George of Trebizond, and Gemistus Pletho might equal Bessarion in merit, though not in honors. They all, however, experienced the patronage of those admirable protectors of letters Nicolas V., Cosmo de' Medici, or Alfonso, king of Naples. These men emigrated before the final destruction of the Greek Empire; Lascaris Musurus, whose arrival in Italy was posterior to that event, may be deemed perhaps still more conspicuous; but as the study of the Greek language was already restored, it is unnecessary to pursue the subject any farther.

The Greeks had preserved, through the course of the Middle Ages, their share of ancient learning with more fidelity and attention than was shown in the west of Europe. Genius, indeed, or any original excellence, could not well exist along with their cowardly despotism and their contemptible theology, more corrupted by frivolous subtleties than that of the Latin Church. The spirit of persecution, naturally allied to despotism and bigotry, had nearly, during one period, extinguished the lamp, or at least reduced the Greeks to a level with the most ignorant nations of the West. In the age of Justinian, who expelled the last Platonic philosophers, learning began rapidly to decline; in that of Heraclius it had reached a much lower point of degradation; and for two centuries, especially while the worshippers of images were persecuted with unrelenting intolerance, there is almost a blank in the annals of Grecian literature. But about the middle of the ninth century it revived pretty suddenly, and with considerable success. Though, as I have observed, we find in very few instances any original talent, yet it was hardly less important to have had compilers of such erudition as Photius, Suidas, Eustathius, and Tzetzes. With these, certainly, the Latins of the Middle Ages could not place any names in comparison. They possessed, to an extent which we can not precisely appreciate, many of those poets, historians, and orators of ancient Greece, whose loss we have long regretted and

must continue to deem irretrievable. Great havoc, however, was made in the libraries of Constantinople at its capture by the Latins—an epoch from which a rapid decline is to be traced in the literature of the Eastern Empire. Solecisms and barbarous terms, which sometimes occur in the old Byzantine writers, are said to deform the style of the fourteenth and fifteenth centuries. The Turkish ravages and destruction of monasteries ensued; and in the cheerless intervals of immediate terror there was no longer any encouragement to preserve the monuments of an expiring language, and of a name that was to lose its place among nations.

That ardor for the restoration of classical literature which animated Italy in the first part of the fifteenth century was by no means common to the rest of Europe. Neither England, nor France, nor Germany, seemed aware of the approaching change. We are told that learning, by which I believe is only meant the scholastic ontology, had begun to decline at Oxford from the time of Edward III. And the fifteenth century, from whatever cause, is particularly barren of writers in the Latin language. The study of Greek was only introduced by Grocyn and Linacer under Henry VII., and met with violent opposition in the University of Oxford, where the unlearned party styled themselves Trojans, as a pretext for abusing and insulting the scholars. Nor did any classical work proceed from the respectable press of Caxton. France, at the beginning of the fifteenth age, had several eminent theologians; but the reigns of Charles VII. and Louis XI. contributed far more to her political than her literary renown. A Greek professor was first appointed at Paris in 1458, before which time the language had not been publicly taught, and was little understood. Much less had Germany thrown off her ancient rudeness. Æneas Sylvius, indeed, a deliberate flatterer, extols every circumstance in the social state of that country; but Campano, the papal legate at Ratisbon in 1471, exclaims against the barbarism of a nation where very few possessed any learning, none any elegance. Yet the progress of intellectual cultivation, at least in the two former countries, was uniform, though silent; libraries became more numerous, and books, after the happy invention of paper, though still very scarce, might be copied at less expense. Many colleges were founded in the English as well as foreign universities during the fourteenth and fifteenth centuries. Nor can I pass over institutions that have so eminently contributed to the literary reputation of this country, and that still continue to exercise so conspicuous an influ-

ence over her taste and knowledge, as the two great schools of grammatical learning, Winchester and Eton — the one founded by William of Wykeham, bishop of Winchester, in 1373; the other in 1432, by King Henry VI.

§ 35. But while the learned of Italy were eagerly exploring their recent acquisitions of manuscripts, deciphered with difficulty and slowly circulated from hand to hand, a few obscure Germans had gradually perfected the most important discovery recorded in the annals of mankind. The invention of printing, so far from being the result of philosophical sagacity, does not appear to have been suggested by any regard to the higher branches of literature, or to bear any other relation than that of coincidence to their revival in Italy. The question why it was struck out at that particular time must be referred to that disposition of unknown causes which we call accident. Two or three centuries earlier, we can not but acknowledge, the discovery would have been almost equally acceptable. But the invention of paper seems to have naturally preceded those of engraving and printing. It is generally agreed that playing-cards, which have been traced far back in the fourteenth century, gave the first notion of taking off impressions from engraved figures upon wood. The second stage, or rather second application of this art, was the representation of saints and other religious devices, several instances of which are still extant. Some of these are accompanied with an entire page of illustrative text, cut into the same wooden block. This process is indeed far removed from the invention that has given immortality to the names of Faust, Schœffer, and Gutenberg, yet it probably led to the consideration of means whereby it might be rendered less operose and inconvenient. Whether movable wooden characters were ever employed in any entire work is very questionable—the opinion that referred their use to Laurence Coster, of Haarlem, not having stood the test of more accurate investigation. They appear, however, in the capital letters of some early printed books. But no expedient of this kind could have fulfilled the great purposes of this invention, until it was perfected by founding metal types in a matrix or mould, the essential characteristic of printing, as distinguished from other arts that bear some analogy to it.

The first book that issued from the presses of Faust and his associates at Mentz was an edition of the Vulgate, commonly called the Mazarine Bible, a copy having been discovered in the library that owes its name to Cardinal Mazarin at Paris. This is supposed to have been printed between the years

1450 and 1455. In 1457 an edition of the Psalter appeared, and in this the invention was announced to the world in a boasting colophon, though certainly not unreasonably bold. Another edition of the Psalter, one of an ecclesiastical book, Durand's account of liturgical offices, one of the Constitutions of Pope Clement V., and one of a popular treatise on general science, called the Catholicon, filled up the interval till 1462, when the second Mentz Bible proceeded from the same printers. This, in the opinion of some, is the earliest book in which cast types were employed—those of the Mazarine Bible having been cut with the hand. But this is a controverted point. In 1465 Faust and Schœffer published an edition of Cicero's Offices, the first tribute of the new art to polite literature. Two pupils of their school, Sweynheim and Pannartz, migrated the same year into Italy, and printed Donatus's grammar and the works of Lactantius at the monastery of Subiaco, in the neighborhood of Rome. Venice had the honor of extending her patronage to John of Spira, the first who applied the art on an extensive scale to the publication of classical writers. Several authors came forth from his press in 1470; and during the next ten years a multitude of editions were published in various parts of Italy. Though, as we may judge from their present scarcity, these editions were by no means numerous in respect of impressions, yet, contrasted with the dilatory process of copying manuscripts, they were like a new mechanical power in machinery, and gave a wonderfully accelerated impulse to the intellectual cultivation of mankind. From the era of these first editions proceeding from the Spiras, Zarot, Janson, or Sweynheim and Pannartz, literature must be deemed to have altogether revived in Italy. The sun was now fully above the horizon, though countries less fortunately circumstanced did not immediately catch his beams; and the restoration of ancient learning in France and England can not be considered as by any means effectual even at the expiration of the fifteenth century. At this point, however, I close the present chapter. The last twenty years of the Middle Ages, according to the date which I have fixed for their termination in treating of political history, might well invite me by their brilliancy to dwell upon that golden morning of Italian literature. But, in the history of letters, they rather appertain to the modern than the middle period; nor would it become me to trespass upon the exhausted patience of my readers by repeating what has been so often and so recently told, the story of art and learning, that has employed the comprehensive research of a Tiraboschi, a Ginguené, and a Roscoe.

NOTES TO CHAPTER IX.—PART II.

I. DOMESTIC ARCHITECTURE.

The best account of domestic architecture hitherto given is in an article with this title in the Glossary of Ancient Architecture by Mr. Twopeny. "There is ample evidence yet remaining of the domestic architecture in this country during the twelfth century. The ordinary manor-houses, and even houses of greater consideration, appear to have been generally built in the form of a parallelogram, two stories high, the lower story vaulted, with no internal communication between the two, the upper story approached by a flight of steps on the outside; and in that story was sometimes the only fire-place in the whole building. It is more than probable that this was the usual style of houses in the preceding century." Instances of houses partly remaining are then given. We may add to those mentioned by Mr. Twopeny one, perhaps older than any, and better preserved than some, in his list. At Southampton is a Norman house, perhaps built in the first part of the twelfth century. It is nearly a square, the outer walls tolerably perfect; the principal rooms appear to have been on the first (or upper) floor; it has in this also a fire-place and chimney, and four windows, placed so as to indicate a division into two apartments; but there are no lights below, nor any appearance of an interior staircase. The sides are about forty feet in length. Another house of the same age is near to it, but much worse preserved. There were in the twelfth century other considerable houses not built in the form of a parallelogram, but of these so few remains are to be found that nothing can be said of their plan, except that there was on the ground-floor a considerable hall, which was divided by columns and arches into a centre and two side aisles, an arrangement which was continued to a later period.

The parallelogram house, seldom containing more than four rooms, with no access frequently to the upper, which the family occupied, except on the outside, was gradually replaced by one on a different type: the entrance was on the ground, the staircase within; a kitchen and other offices, originally detached, were usually connected with the hall by a passage running through the house; one or more apartments on the lower floor extended beyond the hall; there was seldom or never a third floor over the entire house, but detached turrets for sleeping-rooms rose at some of the angles. This was the typical form which lasted, as we know, to the age of Elizabeth, or even later. The superior houses of this class were sometimes quadrangular, that is, including a court-yard, but seldom, perhaps, with more than one side allotted to the main dwelling; offices, stables, or mere walls filled the other three.

Many dwellings erected in the fourteenth century may be found in England; but neither of that nor the next age are there more than a very few which are still, in their chief rooms, inhabited by gentry. But houses which, by their marks of decoration, or by external proof, are ascertained to have been formerly occupied by good families, though now in the occupation of small farmers, and built apparently from the reign of the second to that of the fourth Edward, are common in many counties. They generally bear the name of court, hall, or grange; sometimes only the surname of some ancient occupant; and very frequently have been the residence of the lord of the manor.

The most striking circumstance in the oldest houses is not so much their precautions for defense in the outside staircase, and, when that was disused, the better safeguard against robbery in the moat which frequently environed the walls, the strong gate-way, the small window broken by mullions, which are no more than we should expect in the times, as the paucity of apartments, so that both sexes, and that even in high rank, must have occupied the same room. The progress of a regard to decency in domestic architecture has been gradual, and in some respects has been increasing up to our own age. But the mediæval period shows little of it; though, in the advance of wealth, a greater division of apartments distinguishes the houses of the fourteenth and fifteenth centuries from those of an earlier period.

II. PETRARCH'S LAURA.

The Abbé de Sade, in his memoirs of the life of Petrarch, endeavored to establish his own descent from Laura, as the wife of Hughes de Sade, and born in the family de Noves. This hypothesis has since been

received with general acquiescence by literary men; and Tiraboschi in particular, whose talent lay in these petty biographical researches, and who had a prejudice against every thing that came from France, seems to consider it as decisively proved. But it has been called in question in a modern publication by the late Lord Woodhouselee ("Essay on the Life and Character of Petrarch," 1810). I shall not offer any opinion as to the identity of Petrarch's mistress with Laura de Sade; but the main position of Lord W.'s essay, that Laura was an unmarried woman, and the object of an honorable attachment in her lover, seems irreconcilable with the evidence that his writings supply. 1. There is no passage in Petrarch, whether of poetry or prose, that alludes to the virgin character of Laura, or gives her the usual appellations of unmarried women—puella in Latin, or donzella in Italian; even in the Trionfo della Castità, where so obvious an opportunity occurred. Yet this was naturally to be expected from so ethereal an imagination as that of Petrarch, always inclined to invest her with the halo of celestial purity. 2. The coldness of Laura towards so passionate and deserving a lover, if no insurmountable obstacle intervened during his twenty years of devotion, would be at least a mark that his attachment was misplaced, and show him in rather a ridiculous light. It is not surprising that persons believing Laura to be unmarried, as seems to have been the case with the Italian commentators, should have thought his passion affected, and little more than poetical. But, upon the contrary supposition, a thread runs through the whole of his poetry, and gives it consistency. A love on the one side, instantaneously conceived, and retained by the susceptibility of a tender heart and ardent fancy; nourished by slight encouragement, and seldom presuming to hope for more; a mixture of prudence and coquetry on the other, kept within bounds either by virtue or by the want of mutual attachment, yet not dissatisfied with fame more brilliant and flattery more refined than had ever before been the lot of woman—these are surely pretty natural circumstances, and such as do not render the story less intelligible. Unquestionably such a passion is not innocent. But Lord Woodhouselee, who is so much scandalized at it, knew little, one would think, of the fourteenth century. His standard is taken, not from Avignon, but from Edinburgh, a much better place, no doubt, and where the moral barometer stands at a very different altitude. In one passage (p. 188) he carries his strictness to an excess of prudery. From all we know of the age of Petrarch, the only matter of astonishment is the persevering virtue of Laura. The troubadours boast of much better success with Provençal ladies. 3. But a passage from Petrarch's dialogues with St. Augustin, the work, as is well known, where he most unbosoms himself, leaves no doubt, I think, that his passion could not have been gratified consistently with honor ("De Contemptu Mundi," Dialog. 3, p. 367, edit. 1581).

III. EARLY LEGISLATIVE USE OF ENGLISH.

The progress of our language in proceedings of the legislature is described in the preface to the authentic edition of Statutes of the Realm, published by the Record Commission:

"The earliest instance recorded of the use of the English language in any parliamentary proceeding is in 36 Edward III. The style of the roll of that year is in French, as usual, but it is expressly stated that the causes of summoning the Parliament were declared *en Englois;* and the like circumstance is noted in 37 and 38 Edward III.* In the 5th year of Richard II. the chancellor is stated to have made *un bone collacion en Engleys* (introductory, as was then sometimes the usage, to the commencement of business), though he made use of the common French form for opening the Parliament. A petition from the 'Folk of the Mercerye of London,' in the 10th year of the same reign, is in English; and it appears also that in the 17th year the Earl of Arundel asked pardon of the Duke of Lancaster by the award of the king and Lords, in their presence in Parliament, in a form of English words. The cession and renunciation of the crown by Richard II. is stated to have been read before the estates of the realm and the people in Westminster Hall, first in Latin and afterwards in English, but it is entered on the Parliament roll only in Latin. And the challenge of the crown by Henry IV., with his thanks after the allowance of his title, in the same assembly, are recorded in English, which is termed his maternal tongue. So also is the speech of Lord William Thyrning, the chief-justice of the Common Pleas, to the late King Richard, announcing to him the sentence of his deposition, and the yielding up, on the part of the people, of their fealty and allegiance. In the 6th year of the reign of Henry IV. an English answer is given to a petition of the Commons, touching a

* References are given to the Rolls of Parliament throughout this extract.

proposed resumption of certain grants of the crown, to the intent the king might live of his own. The English language afterwards appears occasionally, through the reigns of Henry IV. and V. In the first and second and subsequent years of Henry VI. the petitions or bills, and in many cases the answers also, on which the statutes were afterwards framed, are found frequently in English; but the statutes are entered on the roll in French or Latin. From the 28d year of Henry VI. these petitions or bills are almost universally in English, as is also sometimes the form of the royal assent; but the statutes continued to be enrolled in French or Latin. Sometimes Latin and French are used in the same statute,* as in 8 Henry VI., 27 Henry VI., and 39 Henry VI. The last statute wholly in Latin on record is 38 Henry VI., c. 2. The statutes of Edward IV. are entirely in French. The statutes of Richard III. are in many manuscripts in French in a complete statute form; and they were so printed in his reign and that of his successor. In the earlier English editions a translation was inserted in the same form; but in several editions, since 1618, they have been printed in English, in a different form, agreeing, so far as relates to the acts printed, with the enrollment in chancery at the Chapel of the Rolls. The petitions and bills in Parliament, during these two reigns, are all in English. The statutes of Henry VII. have always, it is believed, been published in English; but there are manuscripts containing the statutes of the first two Parliaments, in his first and third year, in French. From the fourth year to the end of his reign, and from thence to the present time, they are universally in English."

* All the acts passed in the same session are legally one statute; the difference of language was in separate chapters or acts.

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